140-304
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Rec'd 7/28/27
140-304

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 599. 296

LON HUMPHREYS AND THOMAS E. TUTT, RECEIVERS OF THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY, AND JAMES F. JOY, THOMAS H. HUBBARD, EDGAR T. WELLES, AND O. D. ASHLEY, PURCHASING COMMITTEE, APPELLANTS,

vs.

THOMAS McKISSOCK, RECEIVER, &c.

FILED NOVEMBER 10, 1887.

No. 1403. 991.

IE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY, APPELLANT,

vs.

THOMAS McKISSOCK, RECEIVER, &c.

FILED OCTOBER 18, 1889.

PEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

THE LAW ASSOCIATION
—OF—
PHILADELPHIA

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 599.

SOLON HUMPHREYS AND THOMAS E. TUTT, RECEIVERS OF THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY, AND JAMES F. JOY, THOMAS H. HUBBARD, EDGAR T. WELLES, AND O. D. ASHLEY, PURCHASING COMMITTEE, APPELLANTS,

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JUDD & DETWEILER, PRINTERS, WASHINGTON, FEBRUARY 7, 1890.

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1 Be it remembered that on the first day of December, A. D. 1885, there was filed in the office of the clerk of the circuit court of the United States in and for the southern district, western division of Iowa, issued out of and from the office of the clerk of the circuit court of the State of Iowa in and for Pottawattamie county, a transcript in a suit thereinbefore pending, wherein The United States Trust Company of New York was complainant and The Wabash, St. Louis and Pacific Railway Company and others were respondents; which said transcript contained a bill of complaint in words and figures following, to wit:

2 In the Circuit Court of Pottawattamie County, State of Iowa.

THE UNITED STATES TRUST COMPANY OF NEW YORK, Complainant,
vs.
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*, Defendants.

Bill of Complaint.

In chancery.

To the honorable the judges of the circuit court:

The United States Trust Company of New York, a corporation created by and existing under the laws of the State of New York, brings this its bill of complaint against the Wabash, St. Louis
3 and Pacific Railway Company, a corporation created by and existing under the laws of the States of Missouri, Illinois, Indiana, Ohio, and Michigan, and the other hereinafter-named defendants.

And thereupon your orator complains and says that on or about the fiftheenth day of February, A. D. 1879, the St. Louis, Kansas City and Northern Railway Company, a corporation created by and then existing under the laws of the State of Missouri, made and executed its two thousand three hundred and fifty bonds, bearing date on the first day of April, A. D. 1879, each for the sum of one thousand dollars, all of which were made payable to your orator or bearer forty years after said date, for value recieved, at the National Bank of Commerce, in the city and State of New York, with interest from date thereof at the rate of seven per centum per annum, payable semi-annually, to wit, on the first days of April and
4 October in each year, on the presentation and surrender of the proper coupons annexed thereto, both the principal and interest of the said bonds being payable in gold coin of the weight and fineness as fixed by the laws of the United States then in force, all of which said bonds and coupons were so made and executed in accordance with a resolution duly adopted by the directors of the said railway corporation and a further resolution duly adopted by

the holders of more than two-thirds in amount of the said corporation at meetings duly held shortly prior to the said fifteenth day of February, 1879, and also in accordance with the terms of a certain lease theretofore made and entered into by and between the said corporation and The Council Bluffs and St. Louis Railway Company,
5 one of the defendants herein, which said lease is more fully referred to hereinafter, and that immediately thereafter the said The St. Louis, Kansas City and Northern Railway Company issued, sold, and delivered each and all of the said 2,350 bonds, with the coupons attached, all of which said bonds are now outstanding in the hands of divers persons as owners and holders thereof, whose names are in great part unknown to your orator.

And your orator further shows unto your honors that on or about the said fifteenth day of February, A. D. 1879, the said The St. Louis, Kansas City and Northern Railway Company, being the owner and in the possession of a certain line of railway, formerly known as the Council Bluffs and St. Louis Railway Company of Missouri, and being also the lessee and in the possession of a certain other line of railway, known as The Council Bluffs and St. Louis Railway of Iowa,
6 one of the defendants herein, in order to secure the prompt payment of the principal and interest of the said 2,350 bonds as the sames hould mature, and in persuance of the further provisions of the said resolutions and lease, did make, execute, acknowledge, and deliver to your orator its certain mortgage deed, wherein and whereby it granted and conveyed to your orator, as trustee, and to your orator's successors and assigns in trust all and every part and parcel of the continuous line of railroad extending from Elm Flats, in the county of Daviess and State of Missouri, to the city of Council Bluffs, in the State of Iowa, and all right, title, and interest therein as then owned, leased, and held by the said The St. Louis, Kansas City and Northern Railway Company, commencing at the said Elm Flats, near Pattonsburg, in the State of
7 Missouri, and extending through the counties of Daviess, Gentry, Nodaway, and Atchison, in the said State of Missouri, and through the counties of Page, Fremont, Mills, and Pottawattamie, in the State of Iowa, to the city of Council Bluffs, in the said State, as the said railroad then was or might be thereafter constructed, maintained, operated, or acquired, together with all the privileges, rights, franchises, real estate, right of way, depot, depot grounds, side tracks, water-tanks, engines, cars, and other appurtenances thereunto belonging.

And your orator further shows unto your honors that in and by its said mortgage deed the said The St. Louis, Kansas City and Northern Railway Company did further agree to and with your orator, its successor, successors, and assigns in trust, that it, the said railway company, would, on the first day of April in each year thereafter until the maturity of said bonds, pay the sum of fifty
8 thousand dollars, in gold coin of the weight and fineness thereinbefore mentioned, to your orator, its successor, successors, or assigns in trust, to be held by your orator or its successor, successors, or assigns in trust for the redemption and purchase of

the bonds thereby secured at the lowest price at which the same could conveniently be bought, provided such purchase could be made at or below the price of one thousand and fifty dollars per bond.

And your orator shows unto your honors that it was further covenanted and agreed in and by the said mortgage deed that if the principal of the said bonds or any part thereof should not be paid by the — The St. Louis, Kansas City and Northern Railway Company when the same became due, or if any instalment of interest upon the said bonds or any part thereof should not be paid
9 within sixty days after the same became due and payment thereof should have been demanded at the place of payment therein mentioned, or if the said The St. Louis, Kansas City and Northern Railway Company, its successors or assigns, should, for the period of sixty days, fail to provide the sum of fifty thousand dollars per annum as a sinking fund for the payment and redemption of the said bonds, then and in either of the said events the principal of the bonds thereby secured should become due and payable, and your orator or its successor, successors, or assigns in trust should, whenever requested so to do by the holder or holders of fifty or more of the bonds thereby secured, take possession of all the said mortgaged property, and during such default should manage and control the same and collect and receive all the tolls
10 and income thereof, and upon demand in writing of the holder or holders of fifty or more of the said bonds your orator or its successor, successors, or assigns in trust should proceed to foreclose the said mortgage deed and sell the property thereby conveyed and should apply the net proceeds of such sale, first, to the payment of the costs and expenses of the said trust, including the commission or compensation of the trustee; second, to the payment of the principal and interest of the said bonds, and, third, to pay any surplus to the said The St. Louis, Kansas City and Northern Railway Company, its successors or assigns.

And your orator further shows unto your honors that in and by the said mortgage deed the said The St. Louis, Kansas City and Northern Railway Company did further agree, for itself, its
11 successors and assigns, that it would from time to time pay all the expenses of the said trust, including the compensation and expense of the transfer agent therein provided for and appointed; and that in and by the said mortgage deed it was further agreed that nothing therein contained should be held or construed to prevent or interfere with a foreclosure thereof, the appointment of a reciever, or any other act or proceeding appropriate or customary in such cases by any court of competent jurisdiction; and it was also further agreed that after default in payment of the interest or principal of any of the bonds thereby secured, and when such default should have continued for a space of sixty days after demand, as thereinbefore set forth, *and* then your orator, its successor, successors, and assigns in trust, in any suit, action, or pro-
12 ceeding instituted at the request of the holder or holders of fifty or more of the bonds thereby secured, should be entitled,

as a matter of right, to the appointment, by any court of competent jurisdiction, of a reciever of the railroad, rolling stock, and all property or estate conveyed by the said mortgage deed, and such reciever should have all the powers and rights usually possessed by recievers in similar cases; which said mortgage deed was, between the twenty-fifth day of February, A. D. 1879, and the fourth day of March, A. D. 1879, duly filed for record and recorded in the recorder's office of each of the counties in the States of Missouri and Iowa through which the line of railway mentioned therein was situated; and a true copy of which mortgage deed is hereunto annexed, marked "Exhibit" A, and to which your orator refers
13 and prays that the same may be taken as a part of this its bill of complaint as fully as if set forth *in extenso* herein, the original whereof or a duly certified copy thereof will be produced and improved upon the final hearing in this cause.

And your orator further shows unto your honor, upon information and belief, that after the execution, delivery, and recording of its said mortgage deed to your orator and on or about the tenth day of November, A. D. 1879, the said The St. Louis, Kansas City and Northern Railway Company and the Wabash Railway Company, a certain other corporation created by and then existing under the laws of the States of Illinois, Indiana, Ohio, and Michigan, became and were consolidated with each other under the corporate name of the said The Wabash, St. Louis
14 and Pacific Railway Company and became and were a separate and distinct corporation, created by and existing ever since under the laws of the States of Missouri, Illinois, Indiana, Ohio, and Michigan, and that immediately upon the said consolidation the said The St. Louis, Kansas City and Northern Railway Company and the said The Wabash Railway Company and each of them ceased to exist, and have not nor has either of them since had any corporate existence whatever; that by the terms of their said consolidation the said The St. Louis, Kansas City and Northern Railway Company and the said The Wabash Railway Company consolidated all their property, capital, franchises, debts, and liabilities and obligations of any kind whatsoever, including the mortgage indebtedness to your orator hereinbefore set forth, and that im-
15 mediately upon the said consolidation the said The Wabash, St. Louis and Pacific Railway Company became the owner of and entered upon and acquired the possession and control of all the property conveyed by the said mortgage deed to your orator, and continued such possession and control until or about the twenty-ninth day of May, A. D. 1884, and by the terms of which said consolidation, as your orator is advised and believes, the said The Wabash, St. Louis and Pacific Railway Company became and is obliged, as the successor and assign of the said The St. Louis, Kansas City and Northern Railway Company, to pay your orator the said mortgage indebtedness of the said The St. Louis, Kansas City and Northern Railway Company and each and every part thereof.

16 And your orator further shows unto your honors and charges the fact to be that the semi-annual instalment of in-

terest upon the said issue of bonds secured by the mortgage deed as aforesaid falling due on the first day of April, A. D. 1885, and evidenced by 2,350 coupon or interest notes, each for the sum of thirty-five dollars ($35), in all the sum of eighty-two thousand two hundred and fifty dollars (82,250), maturing on the last-named date, has not, nor has any part thereof, been paid.

That the said The St. Louis, Kansas City and Northern Railway Company and the Wabash, St. Louis and Pacific Railway Company and each of them wholly neglected and refused to pay or cause to be paid the said instalment of interest or the said 2,350 coupon or interest notes due on the last-named date and any of them,
17 but wholly made and still make default in the payment of the said coupon or interest notes or each of them, and that the same and each and all of them are still due and unpaid.

That on the said first day of April, A. D. 1885, a large number of the said coupon or interest notes evidencing the semi-annual instalment of interest due on that day were actually presented for payment at the National Bank of Commerce, in the city and State of New York, the place where the same were by the terms of said bonds payable, and payment thereof or any part thereof was demanded and refused.

That more than sixty days have elapsed since the said instalment of interest and the said 2,350 coupon or interest notes became due and since payment of those presented at the said place of
18 payment has been there demanded and refused, by reason whereof and in accordance with the terms and conditions of the said bonds and the said mortgage deed securing the same the principal of each and all of the said 2,350 bonds and the indebtedness represented thereby has become and is now wholly due and payable, and your orator has thereby become and is now entitled to a foreclosure of the said mortgage deed.

And your orator further shows unto your honors and charges the fact to be that the sum of fifty thousand dollars, due and payable to your orator on the first day of April, A. D. 1885, by the said The St. Louis, Kansas City and Northern Railway Company, according to the terms and conditions of its said mortgage deed, for the
19 redemption and purchase of the bonds secured thereby, provided the same could have then been purchased at or below the price of one thousand and fifty dollars per bond, has not nor has any part thereof been paid or caused to be paid to your orator, and that more than sixty days have elapsed since the said sum became due and payable.

And your orator further charges the fact to be that on the said first day of April, A. D. 1885, and ever since, such purchase could have then been and can now be made much below the said price per bond and in amounts much larger than enough to absorb the said sum then due and payable, and that, notwithstanding which, default in the payment of the said sum of fifty thousand dollars and every part thereof by the said The St. Louis, Kansas
20 City and Northern Railway Company and the said The Wabash, St. Louis and Pacific Railway Company and each of

them still continues. By reason thereof your orator has become and is now entitled to a foreclosure of the said mortgage deed.

And your orator further shows unto your honors, and upon information and belief charges the fact to be, that the defendant, the said The Wabash, St. Louis and Pacific Railway Company, for a long time since has been and is now insolvent and unable to pay its floating debt or the interest accruing on its bonds and other obligations, for the payment whereof it is liable, and that under and by virtue of proceedings now pending in the circuit court of the United States for the eastern district of Missouri and other districts
21 the defendants, Solon Humphreys and Thomas E. Tutt, were, on the twenty-ninth day of May, A. D. 1884, appointed receivers of all the property whatsoever of the said The Wabash, St. Louis and Pacific Railway Company, including all the security conveyed to your orator by the said mortgage deed, together with various other lines of railway, and that the said receivers ever since have held and now hold the possession of all the said property; that in accordance with orders heretofore entered by the said court, and in order to meet certain debts made and contracted by the said The Wabash, St. Louis and Pacific Railway Company other than those due to your orators, the said receivers have already issued receivers' certificates for large sums of money, to the payment of which your orator is apprehensive your orator's said mortgage se-
22 curity may be subjected in preference to the said mortgage deed to your orator; all of which is contrary to equity and good conscience and manifestly to the wrong and injury of your orator and of the owners and holders of the bonds which it *it* represents.

And your orator further shows unto your honors, and upon information and belief charges the fact to be, that the said Solon Humphreys and Thomas E. Tutt, receivers as aforesaid, are now and have been since the date of their said appointment so operating, managing, and controlling your orator's said mortgage security as to impair and greatly decrease the value thereof; that the said receivers have not kept and do not keep the said mortgage security in good order, condition, and repair, but have allowed and are now
23 allowing the same to become greatly wasted, damaged, and impaired; that in their attempts to keep in operation the various lines of railway composing the entire system committed to their care and to meet many and excessively large obligations due to creditors of the said The Wabash, St. Louis and Pacific Railway Company other than your orator the said receivers have diverted and are now diverting the earnings and income of your orator's said mortgage security to the payment of operating and other expenses incurred on behalf of other and different lines of railway committed to their care, as aforesaid; that the said receivers have not kept and are not now keeping the rolling stock appertaining, belonging to, and constituting a part of your orator's mort-
24 gage security in, upon, or in use connected with the said lines of railway mortgaged to your orator, but have allowed and do still allow the same to be scattered over the said entire system

and used and operated for the sole benefit of lines of railway in their said care other than those conveyed to your orator; all of which is greatly to the waste and damage to your orator's said mortgage security and is manifestly to the wrong and injury of your orator and of the owners and holders of the bonds which it represents.

And your orator further shows unto your honors that on or about the tenth day of February, A. D. 1879, the Council Bluffs and St. Louis Railway Company, a corporation created by and then and now existing under the laws of the State of Iowa and one of
25 the defendants herein, did demise and lease to the said The St. Louis, Kansas City and Northern Railway Company, for the term of ninety-nine years from the said date, its entire line of railroad then located or thereafter to be constructed, extending from the said city of Council Bluffs in a southeasterly direction, through the counties of Pottawattamie, Mills, Fremont, and Page, in the said State, to the boundary line between the States of Iowa and Missouri, the same being so much of the security conveyed to your orator as as aforesaid as lies within the said State of Iowa; that in and by terms of said lease the said The St. Louis, Kansas City and Northern Railroad Company, for the purpose of obtaining funds to construct and equip the said leased line of railway, and to also construct and equip its own line of railway, extending, as is hereinbefore
26 set forth, from the said State line to Elm Flats, in the county of Daviess and State of Missouri, did agree to issue its own bonds to the amount of sixteen thousand dollars per mile for every mile of the said continuous railway, extending from the said Elm Flats to the city of Council Bluffs; that by the terms of said lease the said The St. Louis, Kansas City and Northern Railway Company, to secure the payment of the said bonds and interest thereon, agreed to execute a first mortgage on all its right, title, and interest in and to the said continuous line of railroad and appurtenances as then owned by or therein leased to the said lessee railway company, and that the said mortgage should provide for for a sinking fund of fifty thousand dollars per annum, to be paid to a trustee
27 to be named in the said mortgage, for the redemption and payment of the said bonds, and that in and by the said lease it was further agreed that for the purpose of further securing the payment of the principal and interest of the said bonds, and to increase the market value of the same and to induce persons to become the purchasers thereof, the said defendant, The Council Bluffs and St. Louis Railway Company, should execute a guaranty mortgage or deed of trust, conveying its said line of railway, with all its property of every description, and that the said mortgage deeds should stand as security for the bonds so to be issued, subject only to the terms and conditions of the said lease; and your orator prays leave to produce and refer to the original of the said lease or a duly authenticated copy thereof on the hearing of this cause.

28 And your orator further shows unto your honors that in accordance with the terms and provisions of the said lease the said The St. Louis, Kansas City and Northern Railway Company did make and execute and deliver its said bonds to the amount

aforesaid, and did secure the same by its mortgage deed conveying the said continuous line of railway from Elm Flats to the city of Council Bluffs, as aforesaid, and which said bonds and mortgage deed securing the same — made, executed, and delivered to your orator, the said The St. Louis, Kansas City and Northern Railway Company, as hereinbefore set forth.

And your orator further shows unto your honors that in accordance with the further terms and provisions of the said lease, and on or about the fifteenth day of February, A. D. 1879, the said
29 The Council Bluffs and St. Louis Railway Company, in order to increase the market value of the said bonds and to induce persons to become the purchasers thereof, and to further secure and guarantee the payment of the same and interest thereon to an amount that on all the said bonds would equal the sum of sixteen thousand dollars per mile for each and every mile of so much of the said continuous line of railroad as was situated in the State of Iowa, did make, execute, acknowledge, and deliver to your orator its certain mortgage deed, whereby it granted and conveyed unto your orator, as trustee, and to your orator's successor, successors, or assigns, in trust, all its right, title, interest, and estate in and to all and every part and parcel of its railroad aforesaid, commencing at the city of Council Bluffs, in the
30 State of Iowa, and extending in a southeasterly direction through the counties of Pottawattamie, Mill, Fremont, and Page, in the said State of Iowa, to the boundary line between the States of Iowa and Missouri, with all its rights, privileges, and franchises, together with all of the real estate, right of way, depot grounds, side tracks, water-tanks, engines, and cars, as the same then were or might thereafter be constructed, maintained, operated, or acquired, with all the other appurtenances thereunto belonging; which said mortgage deed was, between the twenty-eighth day of February, A. D. 1879, and the fourth day of March, A. D. 1879, duly filed for record and recorded in the recorder's office of each of the counties in the State of Iowa through which the line of railway mentioned therein was situated, and the original of which
31 mortgage deed or a duly certified copy thereof your orator prays leave to produce and refer to upon the hearing of this cause.

And your orator further shows unto your honors that in pursuance of the terms and conditions contained in the said mortgage deed made to your orator by the St. Louis, Kansas City and Northern Railway Company and by reason of the still continuing defaults in the payment of the sums hereinbefore set forth your orator as such trustee has been and is now requested by the holders of more than fifty of the bonds secured by the said mortgage deed to take possession of all the said mortgaged property and during such defaults to manage and control the same and to collect and receive all the tolls and
32 income thereof, and that by reason of the said defaults your orator as such trustee has been and is now requested in writing by the holders of more than fifty of the said bonds to institute this its suit and to obtain herein the appointment of a receiver of

all the said mortgaged premises and a foreclosure of the said mortgage deed

And your orator further shows unto your honors that no proceedings at law for the recovery of the indebtedness aforesaid or any part thereof have been had or taken, nor have any of the holders of the said mortgage bonds, so far as your orator has any knowledge, taken or caused to be taken any proceedings for the recovery of the said indebtedness or any part thereof.

And your orator further shows unto your honors that the
33 hereinafter-named defendants, as it is advised and believes, have or claim to have some interest in the said lines of railway and property, or some part or parts thereof, conveyed to your orator, as aforesaid, by the said The St. Louis, Kansas City and Northern Railway Company, either as subsequent purchasers, incumbrancers, judgement creditors, or otherwise; but your orator charges the fact to be that their interests and the interests of each of them, if any they have, in the said lines of railway and property or any part thereof have accrued subsequently to the lien of the said mortgage deed to your orator and are subordinate thereto.

Wherefore and inasmuch as your orator is remediless in the premises according to the strict rules of common law, and can only have relief in a court of equity, where matters of this nature
34 are properly cognizable and reviewable, to the end, therefore, that the hereinafter-named defendants may, if they can, show why your orator should not have the relief hereby prayed, and may full, true, direct, and perfect answers make, but not under oath, their answers under oath being hereby expressly waived, according to the statute in such cases made and provided, to all and singular the premises, as fully and as particularly as if the same were hereinafter repeated; that an account be had and taken of the bonds and coupon- or interest notes secured by the said mortgage deed of the said The St. Louis, Kansas City and Northern Railway Company and of the amount due thereon; that the names of the lawful holders thereof may be ascertained; that an account be taken of all the mortgage security conveyed by the said mortgage deed,
35 whether acquired before or after the execution and delivery thereof; that the said The St. Louis, Kansas City and Northern Railway Company and the Wabash, St. Louis and Pacific Railway Company may severally and fully disclose what property and interest not hereinbefore sufficiently described or set forth are conveyed or affected by the said mortgage deed, and may be compelled to convey and transfer to your orator, by way of further assurance, such of the said property and interests as have not been specifically conveyed or transferred; that an account may be taken of all the liens and incumbrances upon all of your orator's said mortgage security and the priorities thereof determined; that the said mortgage deed of the said The St. Louis, Kansas City and Northern Railway Company to your orator may be decreed to be a first lien upon all the lines of railway and property described therein or thereby,
36 covenanted or agreed to be conveyed; that any and all reciever's certificates or obligations heretofore issued or to be

issued with the view of making the said certificates or obligations a prior lien or charge upon the premises and property mortgaged to your orator may be declared void and of no effect; that the said defendants and each of them may be required to answer herein and to state and set forth their respective interests in the said mortgage security or any part thereof and the nature and extent of any such interests; that the said mortgaged property or security may be sold at a judicial sale thereof free and clear from the claims of all the parties hereto and free and clear from the claims of all persons whose interests are in any manner represented by any of the parties
37 hereto under the decree of this honorable court, and upon such terms and conditions as to this court shall seem proper; that each and all of the said defendants and all persons in like situation with them or any of them and all persons claiming or to claim by, from, or under them or any of them may from and by the said sale be absolutely barred and foreclosed of and from all right and equity of redemption of, in, or to your orator's said mortgage security or any part or parts thereof; that if the proceeds of such sale be insufficient to pay the costs of this proceeding and to pay and satisfy the amount due upon the said mortgage bonds and coupons or interest notes, the said The St. Louis, Kansas City and Northern Railway Company and the Wabash, St. Louis and Pacific Railway Company may be adjudged to be liable and decreed
38 to pay to your orator the amount of any deficiency which may remain; that pending this suit a reciever or recievers may be appointed in accordance with the terms and provisions of the said mortgage deed and the practice of this court, with all the customary powers of recievers in like cases of all and singular the said mortgage security and every part thereof, and to preserve, operate, manage, and control the same, and to otherwise discharge all the duties ordinarily imposed by courts of equity on the recievers of railway property by such courts appointed; that the said The St. Louis, Kansas City and Northern Railway Company, The Wabash, St. Louis and Pacific Railway Company, and Solon Humphreys and Thomas E. Tutt, the recievers of the last-named railway company, and each of them, upon the appointment by your honors of the reciever or recievers herein,
39 be directed and commanded to forthwith turn over, surrender, and yield possession of all engines, cars, rolling stock, machinery, equipments, or other property whatsoever appertaining, belonging, or incident to the lines of railway mortgaged to your orator; that an injunction may issue restraining the defendants and each of them from interfering with, transferring, selling, or disposing of any of the said mortgaged security, and from taking possession of, levying upon, or attempting to sell the same or any part thereof.

And your orator prays such other and further relief as the nature of its case may require and as shall seem to your honors consistent with equity and good conscience.

May it please your honors to grant unto your orator the writ of

subpœna, to be directed to the Wabash, St. Louis and
40 Pacific Railway Company; the St. Louis, Kansas City and Northern Railway Company; the Central Trust Company of New York (a corporation created by and existing under the laws of the State of New York); James Cheney, a citizen and resident of the State of Indiana; the Mercantile Trust Company of New York (a corporation created by and existing under the laws of the State of New York); the St. Louis, Iron Mountain and Southern Railway Company (a corporation created by and existing under the laws of the State of Missouri); the Council Bluffs and St. Louis Railway Company (a corporation created by and existing under the laws of the State of Iowa), and Solon Humphreys and Thomas E. Tutt, as recievers of the Wabash, St. Louis and Pacific Railway Com-
41 pany, who are severally hereby made parties defendant to this bill of complaint, therein and thereby commanding them and each of them, at a certain day and under a certain penalty therein to be specified, personally to be and appear before your honors in this honorable court and then and there to answer all and singular the premises and to stand to, abide, and perform such orders and decrees as to your honors shall seem meet.

UNITED STATES TRUST COMPANY OF NEW YORK,

By —— ——, *Its Solicitor.*

WILLIAM A. W. STEWART, *Of Counsel.*

42 UNITED STATES OF AMERICA, }
State of New York, City and County of New York, } *ss:*

John A. Stewart, being duly sworn, says that he is the president of The United States Trust Company of New York, the complainant in the foregoing bill of complaint; that the said bill of complaint is true of his own knowledge, except as to those matters therein stated to be on information and belief, and that as to those matters he believes it to be true.

JOHN A. STEWART.

Sworn to before me by the said John A. Stewart and signed by him in my presence this 17th day of June, A. D. 1885.

THOS. COMISKEY,
Notary Public, Kings County.

[SEAL.]

Certified in New York county.

43 EXHIBIT A.

This deed, made and entered into this fifteenth day of February, A. D. 1879, by and between the St. Louis, Kansas City and Northern Railway Company, a corporation organized under the laws of the State of Missouri, party of the first part, and the United States Trust Company of New York, a corporation created under and by virtue of the laws of the State of New York, party of the second part, witnesseth:

That whereas the said St. Louis, Kansas City and Northern Railway Company has made and executed two thousand three hundred and fifty bonds bearing date on the first day of April, A. D. 1879, each for the sum of one thousand dollars, all of which are made payable to the United States Trust Company of New York or
44 bearer, forty years after said date, for value received, at the National Bank of Commerce, in the city and State of New York, with interest from date at the rate of seven per cent. per annum, payable semi-annually on the first days of April and October in each year, on the presentation and surrender of the proper annexed coupons, the principal and interest of said bonds being payable in gold coin of the present weight and fineness, as fixed by the laws of the United States now in force, and which bonds are also exempt from any income tax that now is or may be hereafter levied or provided for by any law of the United States; and

Whereas said St. Louis, Kansas City and Northern Railway Company is the owner of a line of railroad extending in a northwesterly direction from a point known as Elm Flats, near
45 Pattonsburg, in the county of Daviess, State of Missouri, through the counties of Daviess, Gentry, Nodaway, and Atchison, in said State, to the boundary line between the States of Missouri and Iowa; and

Whereas the Council Bluffs and St. Louis Railway Company, a corporation organized under the laws of Iowa, is the owner of a line of railroad extending from the city of Council Bluffs, in the State of Iowa, in a southeasterly direction through the counties of Pottawattamie, Mills, Fremont, and Page, in said State, to a point on said boundary line between the States aforesaid at which the lines of railroad aforesaid join, intersect, and connect with each other; and

Whereas the said Council Bluffs and St. Louis Railway Company, by its certain agreement in writing dated on the tenth day of
46 February, A. D. 1879, for certain good and valuable considerations therein expressed, has leased, demised, and let unto the said St. Louis, Kansas City and Northern Railway Company, its successors and assigns, free from all liens and incumbrances of every kind whatsoever, for the full term of ninety-one years from and after date of said agreement, the entire line of its said railroad as the same now is or may be hereafter constructed, maintained, operated, or acquired, with all the real estate, right of way, depots, depot grounds, side tracks, engines, cars, and other appurtenances thereunto belonging, together with the right, privilege, and franchise of maintaining and operating said railroad and regulating, fixing, collecting, and receiving all freights, tolls, and charges for the use thereof or for the transportation of freight, passengers, and property upon or over the same; and

47 Whereas the line of railroad aforesaid will, when completed, constitute and form one continuous line of railway, extending from said Elm Flats, in said county of Daviess, State of Missouri, to said city of Council Bluffs, in the State of Iowa, and which said continuous line is designated in said bonds and is to be

hereafter known as the Omaha Division of the St. Louis, Kansas City and Northern railway; and

Whereas the St. Louis, Kansas City and Northern Railway Company, for the purpose of obtaining the necessary funds with which to construct and equip said Omaha Division of its railroad, has issued its bonds aforesaid at the rate of sixteen thousand dollars per mile for each and every mile of the railroad aforesaid in the States of Missouri and Iowa:

48 Now, therefore, to secure the prompt payment of the principal and interest of the bonds herein described and hereby secured, and for the further consideration of one dollar to it, the said St. Louis, Kansas City and Northern Railway Company, paid by the United States Trust Company of New York, the receipt of which is hereby acknowledged, the said St. Louis, Kansas City and Northern Railway Company has given, granted, bargained, sold, assigned, conveyed, and confirmed, and by these presents does give, grant, bargain, sell, assign, convey, and confirm, unto the said United States Trust Company of New York, its successor, successors, and assigns in this trust forever, all and every part and parcel of the continuous line of railroad aforesaid, and all right, title, and interest therein, as now owned, leased, and held by the said St. Louis, Kansas City and

49 Northern Railway Company, commencing at said Elm Flats, near Pattonsburg, in the State of Missouri, and extending through the counties of Daviess, Gentry, Nodaway, and Atchison, in said State of Missouri, and through the counties of Page, Fremont, Mills, and Pottawattamie, in the State of Iowa, to the city of Council Bluffs, in said State, as said railroad now is or may be hereafter constructed, maintained, operated, or acquired, together with all the privileges, rights, franchises, real estate, right of way, depots, depot grounds, side tracks, water-tanks, engines, cars, and other appurtenances thereunto belonging.

This conveyance is made in trust, however, for the following purposes, to wit: If the principal of said bonds and the several instalments of interest thereon be duly paid as the same become

50 due, and if payment shall be made to the sinking fund for the redemption and payment of said bonds, as hereinafter provided, then this deed shall be void and the property hereby conveyed shall be released at the costs of said St. Louis, Kansas City and Northern Railway Company; but if the principal of said bonds or any part thereof shall not be paid by said railway company when the same become due, or if any instalment of interest upon said bonds or any part thereof shall not be paid within sixty days after the same become due and payment thereof shall have been demanded at the place of payment, or if said St. Louis, Kansas City and Northern Railway Company, its successors and assigns, shall, for the period of sixty days, fail to provide the sum of $50,000 per annum as a sinking fund for the payment and redemption

51 of said bonds, as hereinafter provided, then and in either of said events the principal of the bonds hereby secured shall become due and payable, and the said United States Trust Company of New York or its successor, successors, or assigns in this

trust shall, whenever requested so to do by the holder or holders of fifty or more of the bonds hereby secured, take possession of all of said mortgaged property, and during such default shall manage and control the same and collect and receive all the tolls and income thereof, and upon demand in writing of the holder or holders of fifty or more of said bonds the said United States Trust Company of New York or its successor, successors, or assigns in this trust shall proceed to foreclose this mortgage and sell the property
52 therein and hereby conveyed, at the city of St. Louis, at public auction, to the highest bidder for cash after having first given twenty days' public notice of the time, terms, and place of sale by advertisement in at least two daily newspapers published in the city of St. Louis and one daily newspaper published in the city of New York, and upon making such sale said United States Trust Company of New York, its successor, successors, or assigns in this trust, shall execute to the purchaser or purchasers thereof an absolute deed to the property hereby conveyed, and it, the said United States Trust Company of New York, its successor, successors, or assigns in this trust, shall receive the net proceeds of such sale and apply the same as follows, to wit:

First. To the payment of the costs and expenses of this
53 trust, including the commission or compensation of the trustee.

Second. To the payment of the principal of said bonds and the interest thereon to the day of sale; and in case the proceeds of said sale are not sufficient to pay the whole of said principal and interest to the day of sale, then said trustee shall apportion the same *pro rata* among the holders of said bonds; and

Third. If after paying all of said bonds and the interest thereon to the day of sale there shall remain a surplus, said trustee shall pay the same to the St. Louis, Kansas City and Northern Railway Company, its successors or assigns; but it is hereby expressly understood and agreed by and between the parties hereto that the purchaser or purchasers of that portion of said railroad and other property
54 situated in the State of Iowa and hereby conveyed shall not be bound by any of the covenants or agreements contained in any lease of the Council Bluffs and St. Louis Railway Company of its railroad and appurtenances aforesaid to the St. Louis, Kansas City and Northern Railway Company unless he or they shall elect in writing to be bound by the covenants contained in said lease.

And the said St. Louis, Kansas City and Northern Railway Company hereby further agrees to and with said United States Trust Company of New York, its successor, successors, and assigns in this trust, that it, the said railway company, will, on the first day of April, A. D. 1880, and every first day of April in each year thereafter until the maturity of said bonds, pay the sum of fifty thousand dollars in gold coin, of the weight and fineness hereinbefore mentioned, to said United States Trust Company of New York, its
55 successor, successors, or assigns in this trust, to be held by it or its successor, successors, or assigns in trust for the redemption or purchase of the bonds hereby secured at the lowest

price at which the same can conveniently be bought, provided such purchase can be made at or below the price of one thousand and fifty dollars per bond; but it is understood that in case sufficient of said bonds to absorb the amount to be paid into said sinking fund cannot be purchased or are not offered to said trustee at or below the price above mentioned, then said trustee or its successor, successors, or assigns shall within thirty days after the receipt of said money return the same to said St. Louis, Kansas City and Northern Railway Company, its successors or assigns, and in determining
56 what bonds shall be purchased and redeemed with the sinking fund aforesaid it shall be the duty of said trustee to accept and pay the bonds offered to it at the lowest price within ten days after the receipt of each instalment of said sinking fund, and in case the bonds of different parties are offered at the same price it shall be the duty of said trustee to accept and pay those first offered within said ten days; and—

Whereas it is provided in the bonds hereinbefore described and hereby secured that said bonds shall pass by delivery or by transfer on the books of the said St. Louis, Kansas City and Northern Railway Company in the city of New York, and that after a registration of the ownership of said bonds, certified thereon by the transfer agent of said railway company, no transfer of said bonds
57 except upon the transfer books of said company shall be valid unless the last transfer shall be to bearer, which transfer to bearer shall again render said bonds transferable by delivery, and that said bonds shall continue subject to successive registration and transfer to bearer, as aforesaid, at the option of each successive holder, provided the coupons issued with the same and not due are attached to said bonds when such registration is desired, and not otherwise:

Now, it is agreed by and between the parties hereto that the said United States Trust Company of New York or its successor, successors, or assigns in this trust will keep in its office in the city of New York the necessary books in which the registration and transfer of said bonds may be made as therein provided for, and
58 the president of said United States Trust Company of New York that may be from time to time elected shall be, and he is hereby, constituted the transfer agent of said St. Louis, Kansas City and Northern Railway Company in said city of New York, and as such transfer agent he shall sign all certificates of registration and transfer provided for herein or in the bonds aforesaid.

And said St. Louis, Kansas City and Northern Railway Company, for itself and its successors and *and* assigns, hereby covenants and agrees that in case of default in the payment of the principal of said bonds or any instalment of interest thereon or in case it shall fail to make payment to the sinking fund herein provided for it will at once, upon demand, deliver possession of the railroad
59 and other property hereby conveyed to the trustee herein named or to its successor, successors, or assigns; but it is further expressly understood and agreed by and between the parties hereto that said St. Louis, Kansas City and Northern Railway Com-

pany, its successors or assigns, shall, until such time as default is made in the payment of the interest or principal of said bonds or until such time as it may fail to make payment to said sinking fund, as herein provided, be entitled to have and to hold the possession of said railroad, with all its appurtenances, and it shall also be entitled to collect, receive, and retain all revenue arising from the use thereof.

The said St. Louis, Kansas City and Northern Railway Company hereby further agrees, for itself, its successors and assigns, that it will from time to time pay all the expenses of this trust, including the compensation and expense of the transfer agent herein provided for and appointed.

And the said United States Trust Company of New York, party of the second part, hereby accepts this conveyance and covenants to perform the trust hereby vested in it according to the terms of this deed and the bonds aforesaid.

In case a vacancy shall occur in this trust from any cause whatsoever, then a new trustee or trustees may be appointed by any court of competent jurisdiction upon the application of the holder or holders of one hundred or more of the bonds hereby secured, and such court may, by its order or decree, vest in such trustee or trustees so appointed all the authority, estate, and powers possessed under this instrument by said United States Trust Company of New York; and in case said United States Trust Company of New York shall at any time before the maturity of the bonds hereby secured cease to do business or cease to keep an office in the said city of New York, then and in that event it shall be the duty of said St. Louis, Kansas City and Northern Railway Company to designate and appoint some other person who may have and keep an office in said city of New York as its transfer agent, and the person designated and appointed shall perform all acts in relation to the registry and transfer of said bonds with like effect as the president of said United States Trust Company of New York might perform such acts under the provisions of this instrument.

It is hereby further agreed that nothing herein contained shall be held or construed to prevent or interfere with a foreclosure of this instrument, the appointment of a receiver, or any other act or proceeding appropriate or customary in such cases by any court of competent jurisdiction.

And it is also agreed as aforesaid that after default in the payment of interest or principal of any of the bonds hereby secured, and when such default shall have continued for the space of sixty days after demand, as hereinbefore set forth, then the party of the second part, its successors, successors, and assigns in this trust, in any suit, action, or proceeding instituted at the request of the holder or holders of fifty or more of the bonds hereby secured, shall be entitled as a matter of right to the appointment by any court of competent jurisdiction of a reciever of the railroad, rolling stock, and all property and estate conveyed by this instrument,

and such recievers shall have all the powers and rights usually possessed by receivers in similar cases.

64 For the purpose of designating the rolling stock that shall belong to the line of railroad hereby mortgaged it is hereby agreed by and between the parties hereto that the party of the first part will mark in some substantial manner all engines and cars of each and every class hereafter purchased by it with the words "Omaha Division" until such time as the engines and cars of each and every class so purchased and marked shall bear the same proportion to the number of miles of railroad hereby mortgaged and surveyed that the whole number of engines and cars of each and every class now owned by the party of the first part bears to the whole number of miles now owned by it; and the party of the first part further agrees that it will thereafter at all times keep the rolling stock designated as belonging to the railroad hereby conveyed equal in value and amount per mile to the amount of rolling
65 stock per mile on the entire line or lines of railroad owned by said party of the first part, its successors or assigns.

It is further understood and agreed by and between the parties hereto that the purchase price of the bonds secured by this mortgage is to be recieved by and paid to the United States Trust Company of New York, its successor, successors, or assigns in this trust, and until the final completion of the railroad hereby mortgaged and conveyed the proceeds arising from the sale of said bonds shall only be paid by said trustee to the party of the first part, its successors or assigns, in instalments, no one of which shall exceed the sum of two hundred thousand dollars, and, with the exception of the first instalment of the same, shall be paid only on the
66 deposit with such trustee of a certificate of the president of said railroad company and the chief engineer in the charge of the construction of the line of railroad hereby mortgaged that the previous installment has been expended exclusively in the construction or equipment of said line of railroad or in the purchase of material for the construction thereof.

And it is hereby further mutually covenanted and agreed by and between the parties to this instrument that the said party of the second part, its successor, successors, or assigns in this trust, shall be accountable only for reasonable diligence in the management thereof, and shall not be responsible for the acts of any agent or servant employed by it or them when such agent or servant shall have been employed with reasonable discretion.

67 In testimony whereof the said St. Louis, Kansas City and Northern Railway Company has caused its seal to be hereunto affixed and these presents to be subscribed by its president and secretary, at St. Louis, Missouri, on this fifteenth day of February, A. D. one thousand eight hundred and seventy-nine, and the said United States Trust Company of New York, trustee herein, has, by its president, also signed these presents and attached its corporate

seal hereto in signification of its acceptance of the trust herein created.

ST. LOUIS, KANSAS CITY AND NORTHERN RAILWAY COMPANY,
[SEAL.] By B. W. LEWIS, JR., *President.*

Attest: JAMES F. HOW, *Secretary.*

68 UNITED STATES TRUST COMPANY OF NEW YORK,
By JOHN A. STEWART, *President.*
WM. DARROW, *Secretary.* [SEAL.]

STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that on this fifteenth day of February, A. D. 1879, before me, the undersigned, a notary public within and for the city and county of St. Louis and State of Missouri, came B. W. Lewis, Jr., president, and James F. How, secretary, of the St. Louis, Kansas City and Northern Railway Company, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and
69 they acknowledged the same to be the act and deed of the said company by them as president and secretary of said St. Louis, Kansas City and Northern Railway Company, party thereto, and that they affixed the seal of said corporation thereunto by authority of said company and severally acknowledged that they executed the same as the act and deed of said corporation for the purposes therein mentioned, and that the seal so affixed is the corporate seal of said company.

And I further certify that I was qualified as notary public aforesaid on the 13th day of March, A. D. 1876, and that my official term expires on the 9th day of March, A. D. 1882.

In testimony whereof I have hereunto set my hand and affixed my official seal this the 15th day of February, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] GEO. S. GROVER,
Notary Public, St. Louis City and County, Missouri.

70 STATE OF NEW YORK, } ss:
City and County of New York, }

Be it known that on the twenty-first day of February, in the year one thousand eight hundred and seventy-nine, before me, the undersigned, a notary public for the city of New York, in and for said county and State aforesaid, appeared John A. Stewart and William Darrow, both to me personally known, the first as president and the latter as secretary of the United States Trust Company of New York, at the date of the execution of the above instrument, and to me known to be the real persons who executed the foregoing instrument in their said several capacities of president and secretary as aforesaid, and each of them

severally and for himself alone acknowledged that he had
71 executed and delivered the said instrument freely and voluntarily for the uses and purposes therein expressed, and the said William Darrow, having been by me duly sworn, did depose and say that the seal affixed to the said instrument is the corporate seal of the said United States Trust Company of New York, and that he, the said William Darrow, was the secretary of the said company at the time of the execution of the foregoing instrument, and that he affixed said seal to said instrument by authority of said company for such purposes, and that said instrument was executed and delivered as the act of said company for the purposes in said instrument expressed; which said acknowledgment and deposition are to me satisfactory evidence of the due execution and delivery of said instrument.

Witness my hand and notarial seal on this twenty-first day
72 of *of* February, in the year one thousand eight hundred and seventy-nine.

[SEAL.] HENRY L. THORNELL,
Notary Public, City and County of New York.

The foregoing is hereby approved as to form and manner of execution.

WILLIAM A. W. STEWART,
Counsel for Trustee.

February 21, 1879.

STATE OF MISSOURI, } *ss:*
County of Daviess, }

In the recorder's office.

I, Wm. S. Abell, recorder of said county, do hereby certify that the within instrument of writing, to wit, mortgage from St. L., K. C. & M. R'y Co. to the United States Trust Co. of New York, was on the 27th day of February, A. D. 1879, at 7 o'clock and — minutes a. m., duly filed for record in this office and is recorded
73 in the records of this office, in Book M, at pages 317 and following.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed my official seal, at office, in Gallatin, Mo., this 11th day of March, A. D. 1879.

[SEAL.] W. S. ABELL, *Recorder.*

STATE OF MISSOURI, } *ss:*
County of Gentry, }

In the recorder's office.

I, J. B. Thomas, clerk of the circuit court and *ex officio* recorder within and for the county aforesaid, do certify that the instrument of writing hereto attached, with the certificate thereon, was filed for record in my office on the 27th day of February, 1879, at 2 o'clock

— minutes p. m., and that the same is duly recorded in said office in Book "H" for recording mortgages, at pages 53, 54, 55, 56, 57, 58, 59, 60.

74 In witness whereof I have hereunto set my hand and affixed the seal of said court.

Done at Albany, Missouri, this 21st day of March, 1879.

[SEAL.] J. B. THOMAS, *Recorder.*

STATE OF MISSOURI, } ss:
County of Nodaway, }

In the recorder's office.

I, Lawrence J. Growney, clerk of the circuit court and *ex officio* recorder within and for the county aforesaid, do certify that the instrument of writing hereto attached, with the certificate thereon, was filed for record in this office on the 28th day of February, 1879, at 8 o'clock and 30 minutes a. m., and that the same is duly recorded in said office in Book 19 for recording mortgages, at pages 345, 346, &c.

[SEAL.] In witness whereof I have hereunto set my hand and affixed the seal of said court.

75 Done at Maryville this 29th day of March, 1879.

LAWRENCE J. GROWNEY, *Clerk,*
By THEO. F. JONES, *Deputy.*

Certificate of Record.

STATE OF MISSOURI, } ss:
County of Atchison, }

I, John W. Smith, clerk of the circuit court and *ex officio* recorder in and for said county, do hereby certify that the annexed instrument, together with the certificate of acknowledgment thereon, were received by me for record on the 28th day of February, 1879, at 5 o'clock and 20 minutes p. m., and that the same are truly recorded in my office in Book Number 12, at page number 269 to 280.

In testimony whereof I have hereunto set my hand
[SEAL.] and affixed the seal of said court, at office, in
76 Rockport, this 24th day of March, 1879.

JOHN W. SMITH, *Recorder.*
[SEAL.] By —— ——, *Deputy.*

Mortgage.

St. Louis, Kansas City & Northern Railway Co. to the United States Trust Company of N. Y.

STATE OF IOWA, } ss:
Page County, }

Filed for record the 1st day of March, A. D. 1879, at 6 o'clock p. m., and recorded in Book 27, on pages 127 to 136.

JAMES L. BROWN,
Recorder of Page County, Iowa.

STATE OF IOWA, } ss:
Fremont County, }

I, M. R. Yowell, recorder of the county of Freemont and
77 State of Iowa, do hereby certify that a certain mortgage given by the St. Louis, Kansas City and Northern Railway Company to the United States Trust Company of New York and bearing date the fifteenth day of February, 1879, was filed for record in my office on the 3rd day of March, 1879, at 9 o'clock a. m., and is duly recorded in Book "L," pages 478 to 487, inclusive, mortgage records of Freemont county and State of Iowa.

Witness my hand, March 7, 1879, at my office, in Sidney, county and State aforesaid.

M. R. YOWELL,
County Recorder, Fremont County, Iowa.

No. 174.

STATE OF IOWA, } ss:
Mills County, }

I, M. H. Byers, recorder of said county, hereby certify that the within mortgage was duly filed in my office on the 3rd day
78 of March, A. D. 1879, at 11 o'clock a. m., and recorded in Book No. 13 of Mortgages, at page 71.

M. H. BYERS,
Recorder of Mills County, Iowa.

COUNCIL BLUFFS, IOWA, *March* 24, 1879.

I, James P. Goulden, recorder of Pottawattamie county, State of Iowa, do hereby certify that the mortgage from the St. Louis, Kansas City and Northern Railway Company to the United States Trust Company of New York was filed for record in this office March 3, 1879, at 5 o'clock p. m., and that the same is recorded in Book 90 of Records, at pages 16 to 27, inclusive.

JAMES P. GOULDEN,
Recorder, Pottawattamie Co., Iowa.

79 Afterwards, on the 25th day of February, A. D. 1886, there was filed in the office of the clerk of the said United States court a petition, with affidavits, praying the appointment of a receiver, which are in words and figures following, to wit:

80 In the Circuit Court of the United States, Southern District of Iowa, Western Division Thereof.

UNITED STATES TRUST COMPANY OF NEW YORK, Complainant,
against
THE WABASH, ST. LOUIS AND PACIFIC RAILROAD COMPANY and Others, Defendants.

To the honorable the judges of said court:

The petition of the United States Trust Company of New York respectfully shows to the court as follows:

That your petitioner is the trustee named in the mortgage dated February 15, 1879, made by the St. Louis, Kansas City and
81 Northern Railway Company and known as the Omaha Division mortgage, to secure the payment of $2,350,000.00, with interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of April and October; that default having been made April 1st, 1885, in the payment of the instalment of interest due on that day the trustee, at the request of the committee of the holders of the bonds secured by said mortgage, subsequently instituted proceedings to foreclose said mortgage by two actions—one brought in the circuit court of Pottawattamie county Iowa, and the other in the circuit court of Gentry county, Missouri,

At the request of said committee, and after consultation.
82 and conference with the various parties in interest, your petitioner determined, as the mortgage premises were then in the possession of the receivers of the Wabash, St. Louis and Pacific railway, not to press the prayer for the appointment of a receiver contained in its bill of complaint until November, 1885, when an application was made in each of said courts for the appointment of Thomas McKissock, of the city of St. Louis, Missouri, receiver of the property covered by said mortgage. Upon the presentation of such applications a petition and bond were filed by Solon Humphreys and Thomas E. Tutt, the said receivers of the Wabash, St. Louis and

Pacific railway, for the removal of said actions to the circuit
83 courts of the United States for the southern district of Iowa and the western district of Missouri respectively; that said actions are now pending in said courts, the motions for the appointment of such receivers never having been heard, and that a duly certified copy of the record herein has been filed with the clerk of this court.

Your petitioner further shows that on the 8th day of December, 1885, upon its certified petition therefore, duly filed in the office of the clerk of the circuit court of the United States for the eastern division of Missouri, and upon all of the pleadings and proceedings taken in the action then pending in the said court, entitled "The

Central Trust Company of New York against The Wabash,
84 St. Louis and Pacific Railway Company and others, consolidated cause," it applied to said court for an order directing said Wabash receivers to transfer and surrender to the receiver to be appointed in this action all the property and premises described in said mortgage; that upon the hearing of such motion it was continued for further consideration for the reasons mentioned in the opinions of said court, to which your petitioner prays leave to refer.

Your petitioner further shows that on the 4th day of January, 1886, in accordance with such decision and with the request of the bondholders, to all of whom, so far as your petitioner was able to ascertain by advertisement in four newspapers published in the city

of New York, and one newspaper published in the city of St.
85 Louis, and one in the city of Chicago, the condition of said mortgage property had been made known, your petitioner renewed said motion, and thereafter such proceedings were had that

an order was duly entered in said cause on the 6th day of January, 1886, a certified copy of which is hereto annexed, marked Exhibit "A," to which your petitioner prays leave to refer and to make a part of this petition.

Your petitioner further shows that it has been requested by said bondholders' committee to forthwith apply to this court for the appointment of Thomas McKissock, of the city of St. Louis, Missouri, as receiver of the property covered by said mortgage, in order that in the event of the payment of $13,708.33 mentioned in said
86 order marked Exhibit "A," not being made before February 5, 1886, or in event of such payment at the expiration of the sixty days therein mentioned, the receiver, the said McKissock, may be in a position, as such receiver, duly appointed and qualified, to at once take possession of and operate all of the said mortgaged property.

That your petitioner is informed and believes that said McKissock is a man of integrity, whose character and position are recognized in the community in which he resides and has resided for many years, and that by reason of his intimate acquaintance with the railway and property described in the bill of complaint herein and with its condition, needs, and possibilities, he is well fitted to be appointed such receiver.

Wherefore your petitioner prays for an order of this court,
87 to be made after due deliberation, appointing said Thomas McKissock receiver of all the premises and property described in the said mortgage to your petitioner, with all the powers usually vested in receivers in like cases, and for such other and further relief as may be just.

And your petitioner, as in duty bound, will ever pray, &c.

Dated New York, January 14, 1886.

UNITED STATES TRUST CO. OF N. Y.,
By JOHN A. STEWART, *President.*

UNITED STATES OF AMERICA,
Southern District of New York,
City and County of New York, } *ss:*

John A. Stewart, being duly sworn, deposes and says he is the president of the United States Trust Company of New York,
88 the petitioner above named, and that the foregoing petition is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

JOHN A. STEWART.

Subscribed and sworn to before me this fourteenth day of January, 1886.

THOMAS S. COMISKEY,
[SEAL.] *Notary Public, Kings County.*

Certificate filed in New York county.

89 Circuit Court of the United States, Southern District of Iowa, Western Division Thereof.

UNITED STATES TRUST COMPANY OF NEW YORK, Complainant,
against
WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others, Defendants.

UNITED STATES OF AMERICA,
State of New York, City and County of New York, } ss:

John H. Beach, being duly sworn, deposes and says that he is the chairman of the committee of holders of the bonds of the St.
90 Louis, Kansas City and Northern Railway Company, known as Omaha Division bonds; that said committee was appointed in May, 1885, at a meeting of the bondholders called by the United States Trust Company of New York, as trustee under the mortgage of the St. Louis, Kansas City and Northern Railway Company to secure said bonds, notice of which meeting was published in the daily papers in New York; that said meeting was well attended, and by a vote of the bondholders present at said meeting this committee, of which deponent is chairman, was unanimously elected to advise with the trustee of the said mortgage as to the proceedings which should be taken to protect the rights and interests of said bondholders; that the bonds which have been registered in
91 the list kept by the committee amount to about $1,600,000, and are increasing; that said committee, which is composed of James E. Pulsford, James H. Smith, Charles S. Smith, James F. Dwight, and deponent, has had many meetings from time to time, and has procured evidence of the management of the railroad property covered by said mortgage and now in the hands of Messrs. Humphreys and Tutt, as receivers of the Wabash, St. Louis and Pacific railway, and upon evidence so obtained said committee has requested said trustee to take the necessary proceedings to secure the appointment of a separate receiver of the property covered by said mortgage and to secure the surrender of said property to him by said Wabash receivers.

That at a meeting of said committee held the 25th day
92 of November, 1885, it was unanimously resolved that the trustee be requested to as- the appointment of Thomas McKissock, of St. Louis, Missouri, as such receiver. Deponent has been acquainted with said McKissock for a period of twenty-five years and believes him to be a man not only of high character, but also well known in the community in which he resides and has resided for many years—his acquaintance with and capacity for railway operation and construction.

During the time that deponent served as receiver of the Missouri and Pacific Railway Company and its leased lines, and as receiver of the Atlantic and Pacific Railroad Company and its leased

lines, deponent endeavored to secure the services of said
93 McKissock as superintendent and general manager, being confident that said McKissock was a wise and efficient railroad manager; that said McKissock was superintendent of the St. Louis, Kansas City and Northern Railway Company at the time when said Omaha Division was constructed, and is particularly familiar with the position and needs of that property.

JOHN H. BEACH.

Subscribed and sworn to before me this 14th day of January, 1886.

ROBERT S. MINTURN,
[SEAL.] *Notary Public* (103), *New York County.*

94 EXHIBIT "A."

Nos. 2357 and 2464, consolidated.

United States Circuit Court, Eastern District of Missouri.

CENTRAL TRUST COMPANY OF NEW YORK *et al.*
against
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*

Duly Certified Copy of the Order for Receivers to Transfer the Omaha Division of the Wabash, St. Louis and Pacific Railway in the Above-Entitled Cause.

95 In the Circuit Court of the United States for the Eastern District of Missouri.

THE CENTRAL TRUST COMPANY OF NEW YORK *et al.*
vs.
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*
Consolidated Cause.

Order for receivers to transfer the Omaha Division of the Wabash, St. Louis and Pacific Railway.

JANUARY 6TH, 1886.

Now, on this day, comes the United States Trust Company of New York, trustee, by its solicitor, and represents to the court that it is the trustee under a certain mortgage or trust deed executed
96 by the St. Louis, Kansas City and Northern Railway Company on February 15th, 1879, to secure certain bonds commonly known as "Omaha Division bonds," of which there are now outstanding $2,350,000, said bonds bearing interest at the rate of seven per cent. per annum, payable semi-annually.

That said railway company defaulted in the payment of the interest falling due upon said bonds on April 1st, 1885, and that such default continues, no interest upon said bonds having been paid since October 1st, 1884; that said mortgage embraces and covers a

line of railroad of the Wabash, St. Louis and Pacific Railway Company extending from the city of Council Bluffs, in the county of Pottawattamie, Iowa, to Pattonsburgh, in the county of Daviess, Missouri, said railroad and branch being of the aggregate
97 length of one hundred and forty-three miles.

That said United States Trust Company of New York filed its bill of complaint in the circuit courts of the counties of Pottawattamie, Iowa, and Gentry, Missouri, praying for the foreclosure of its said mortgage, which said actions were by the receivers herein removed into the circuit courts of the United States for the southern district of Iowa and western district of Missouri respectively, where the same are now pending, and in each of which said actions there is now undetermined a motion to remand the cause to the respective State court- in which the same was originally brought.

And the said United States Trust Company of New York having prayed the court- for an order directing the receivers to surrender to it, as such trustee as aforesaid, the possession and control of the said railroad and property embraced in and covered and conveyed
98 by its said mortgage, with leave to apply to the circuit courts in which its two said foreclosure actions are pending for such orders and decrees as may be advised are needful for the best protection and conduct of its said trust touching the future management and operation of said railroad as provided in said mortgage; the division and apportionment of the equipment and rolling stock between said trustee and the line of railroad conveyed by their mortgage and the said receivers and the other divisions of said Wabash, St. Louis and Pacific railway, and the entering and executing of a final decree of foreclosure and sale of said railroad and *and* property covered by said mortgage to said trustee, United States Trust Company of New York, and that it be hence dismissed; and the receivers appointed by this court, the Central Trust Company of New York, and James Cheney, of Indiana, trustees under
99 the consolidated mortgage mentioned in the bill and exhibits, and all other parties interested in said motion being represented in open court by their several solicitors and being duly advised of said motion, and the court having fully considered said motion and being advised in the premises, it is now hereby ordered that the said receivers do, within thirty days from and after the filing of this order, transfer and surrender to the said trustee, United States Trust Company of New York, or to any person or receiver appointed at its instance by the circuit courts of the States for the southern district of Iowa or the western district of Missouri, or by the circuit courts of *the* Pottawattamie county, Iowa, or
100 Gentry county, Missouri, or by any one or more of said courts in which the foreclosure actions brought by said trustee may at the time of said appointment be pending, the entire lines of railroad hereinafter described, and known as the Omaha Division of the Wabash, St. Louis and Pacific railway, and also all property real and personal, pertaining to said division and now in their possession and control: Provided, That inasmuch as the rolling stock and equipment property covered and conveyed by said mortgage

has been used indiscriminately with the rolling stock and equipment belonging to other division of the railways, and inasmuch as an equitable apportionment of rolling stock and equipment
101 will be made as hereinafter provided, it is further ordered that for the time being, and until a final distribution and apportionment of rolling stock and equipment is made to said Omaha Division, the receivers shall permit said trustee or its representative or receiver appointed as herein provided to have the use of such rolling stock and equipment in kind and amount as has been needed in the business of said Omaha Division during the three months last past.

It is further ordered that if the Wabash, St. Louis and Pacific Railway Company or some person or persons on its behalf or the receivers herein at the expiration of said thirty days shall pay or cause to be paid to said United States Trust Company of New York, trustee, the sum of thirteen thousand seven hundred and
102 eight $\frac{33}{100}$ dollars ($13,708.33) in cash, being equal in amount of one month's interest on the first-mortgage bonds secured by said Omaha Division mortgage, to be applied by said trustee upon the indebtedness secured by said mortgage, the time for the transfer and surrender of said Omaha Division and equipment above directed be thereupon extended for the further period of thirty days, making in all sixty days from and after the filing of this order, but that under no circumstances shall such transfer and surrender be longer delayed.

Immediately upon the expiration of thirty days from and after the filing of this order, in case said sum of thirteen thousand seven hundred and eight $\frac{33}{100}$ dollars ($13,708.33) is not paid before
103 such expiration, and immediately upon the expiration of said sixty days from and after the date of filing hereof, in case said sum is duly paid as hereinabove provided, said receivers shall forthwith and without any further order of this or any other court make the transfer and surrender above directed.

It is further ordered that the matter of the division and equitable apportionment of the rolling stock and equipment between said Omaha Division and said Wabash, St. Louis and Pacific railway be, and the same is hereby, submitted to the courts by which the actions brought by the said trustee for the foreclosure of its said mortgage are pending for adjudication and settlement by decree.

The surrender and transfer of the property under this order
104 shall not be held to divest this court of jurisdiction of said property in this cause, but the same shall continue to be subject to such jurisdiction until the further order of this court; and upon due notice by order of this court the said trustee shall hereafter appear in court in response to any demand or requirement that shall be ordered by the court; this clause of this order to be and remain in force until the further order of this court.

This order shall in no manner prejudice or curtail the right of said trustee to prosecute its foreclosure proceedings now pending in the circuit courts of the United States for the southern district of

Iowa and western district of Missouri or in the said State
105 courts if said actions or either of them shall be there remanded to finale foreclosure, decree, and sale; said trustee shall also have the right to except to any orders made by this court in this cause concerning it or the said Omaha Division covered and conveyed by said mortgage.

And it is further ordered that the receivers, having appeared in said foreclosure actions pending in said circuit courts of the United States for the southern district of Iowa and western district of Missouri or the said State courts to which said actions or either of them may be remanded, shall present in said courts for final adjudication any demand that they may have as such receivers against said property known as the Omaha Division for the oper-
106 ating or other expenses, and also as to the portion, if any, of receivers' certificates issued under the orders of this court for which said property may be justly chargeable in law or equity, and that in said courts the said receivers answer and litigate to final adjudication any and all claims made against them and in favor of said Omaha Division in respect to the credits allowed to said Omaha Division by said receivers and any and all claims and questions pertaining to a full, equitable, and final settlement between said Omaha Division, as a seperate and several road, and the said The Wabash, St. Louis and Pacific railway.

107 UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true copy of the order for receiver to transfer the Omaha Division of the Wabash, St. Louis and Pacific railway, in case, Nos. 2357 and 2464 consolidated, of The Central Trust Company of New York and others, complainants, against The Wabash, St. Louis and Pacific Railway Company and others, defendants, as fully as the same remains on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said
108 district, this 6th day of January, in the year of our Lord eighteen hundred and eighty-six.

A. P. SELBY,
Clerk of said Court,
[SEAL.] By T. L. CRAWFORD, *Deputy.*

Filed Feb. 25th, 1886.

H. K. LOVE, *Clerk.*

109 Afterwards, on the 3rd day of March, A. D. 1886, there was filed and entered of record in the office of the clerk of the said United States court an order of the judge thereof in words and figures following, to wit:

110 In the Circuit Court of the United States for the Southern District of Iowa, Western Division Thereof.

UNITED STATES TRUST COMPANY OF NEW YORK, Complainant,
against
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others, Defendants.

Upon reading and filing the verified petition of the complainant herein and the exhibits thereto annexed and the several answers of the defendant-, The Wabash, St. Louis and Pacific Railway Company, The Central Trust Company of New York, and Solon Humphreys and Thomas E. Tutt, as receivers of the said Wabash, St. Louis and Pacific railway, and the demurrer of the defendant, The Council Bluffs and St. Louis Railway Company, the other defendants herein having failed to file appearances or to plead herein,
111 except the defendant, The Mercantile Trust Company of New York, which has filed its appearance herein, but has made default in pleading, and the parties being before the court, and the court having heard argument and being fully advised in the matter, now, on motion of Theodore Sheldon, the complainant's solicitor, it is ordered, adjudged, and decreed that Thomas McKissock, Esq., of the city of St. Louis, Missouri, be, and he hereby is, appointed receiver herein of all and singular the premises and property described in the mortgage made to the complainant by the St. Louis, Kansas City and Northern Railway Company, dated Feb-uary 15, 1879, as set forth in the complainant's petition or bill of complaint herein, with full power and instructions to take possession of the same and every part thereof, and to manage, control, operate, possess, and protect all of said property, acting in all things subject to the order of the court; that the said receiver, before entering upon his duties, execute a bond in the penal sum of twenty-five thou-
112 sand dollars, with surety, to be approved by this court or the clerk thereof, conditioned for the faithful performance and discharge by the said receiver of his duties as such, and that he will in all things execute, obey, and observe all orders of this court now or hereafter to be made herein.

And it is further ordered, adjudged, and decreed that the said receiver be, and he hereby is, authorized and ordered to prosecute, defend, and continue all suits and legal proceedings affecting said mortgaged premises, property, and franchises brought by or against the defendants, The St. Louis, Kansas City and Northern Railway Company, The Council Bluffs and St. Louis Railway Company, The Wabash, St. Louis and Pacific Railway Company, or Solon Humphreys and Thomas E. Tutt, as receivers of the property held or owned by said Wabash, St. Louis and Pacific Railway Company, whether heretofore or hereafter commenced or whether in the names or name of said defendants or any of them; to defend all
113 suits brought against him as such receiver or affecting the receivership, and to bring such suits or proceedings in the

names or name of said defendants or any of them or otherwise as he may be advised by counsel to be necessary and proper in the discharge of the duties of his office and for acquiring, securing, and protecting the assets, franchises, property, and rights described and embraced in the said mortgage.

And it is further ordered and adjudged that the said defendants last above mentioned and each and every of them and their agents, servants, officers, and attorneys and whoever may have possession or control thereof do, on the sixth day of March, 1886, transfer and surrender to said receiver, upon his having duly qualified, as hereinbefore provided, such qualification to be evidenced, when evidence is demanded by any one of said defendants, by the certificate of the clerk of this court that the bond hereby required has been filed in his office, all the property, real and personal, wheresoever found, whereof he is hereby appointed receiver as afore-
114 said, and all the books of vouchers, maps, plats, deeds, and other evidences relating exclusively or chiefly thereto.

And it is further ordered and adjudged that said receiver have full power and authority to inquire after, receive, and take possession of all such property and be vested with all the powers conferred by law and the practice of this court upon receivers in like cases.

And it is further ordered and adjudged that said receiver keep full and accurate accounts of all his acts and doings as such receiver and report the same to this court from time to time whenever required by law or the court so to do; and it is further ordered and adjudged that said receiver be, and he hereby is, authorized and empowered to employ such counsel and attorneys as he may deem necessary to manage in his behalf such suits and other proceedings and affairs as have arisen or may arise and to advise him in relation to the performance of the duties of his office, and that said receiver may use the real and personal property above described for any
115 and all the purposes set forth in this order.

And it is further ordered and adjudged that said receiver shall have full power to pay and discharge all debts due to laborers, servants, agents, and employés of all kinds for services rendered in connection with the operation of the said mortgaged railway and in and about the conduct and management of its lawful business by him as such receiver.

And it is further ordered that said receiver be, and he hereby is, authorized and empowered to sign, issue, and deliver such certificates, under his name as such receiver, in such form and to such amounts as shall from time to time be approved by this court, and to use the same or apply the proceeds thereof to the payment and satisfaction in whole or in part of any debts now due or which may hereafter be contracted by him in the proper management and operation of said railroad and other mortgaged property, which said certificates shall be payable out of any
116 moneys applicable for that purpose, and that the sum or sums represented by said certificates shall, unless previously discharged, be payable out of any money realized upon the foreclosure and sale of the mortgaged property referred to and de-

scribed in the petition or bill of complaint herein equally with any other liabilities incurred by the receiver in the protection and management of the said property and the operation of said railroad.

And it is further ordered that nothing herein contained shall affect or impair the order relating to the said premises and property heretofore entered of record on the 6th day of January, 1886, by the circuit court of the United States for the eastern district of Missouri.

Iowa City, March 1st, 1886.

J. M. LOVE, *Judge.*

117 Filed March 3d, 1886.

H. K. LOVE, *Clerk.*

118 Afterwards, on the 7th day of October, A. D. 1886, the same being the 10th day of the regular September term, A. D. 1886, of said court, there was filed and entered of record therein a decree of said court in words and figures following, to wit:

119 In the Circuit Court of the United States for the Southern District of Iowa, Western Division Thereof.

UNITED STATES TRUST COMPANY OF NEW YORK, Complainant,
against
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY, THE St. Louis, Kansas City and Northern Railway Company, The Central Trust Company of New York, James Cheney, The Mercantile Trust Company of New York, The St. Louis, Iron Mountain and Southern Railway Company, and Solon
120 Humphreys and Thomas E. Tutt, as Receivers of said Wabash, St. Louis and Pacific Railway Company, Defendants.

This cause came on to be further heard at this term and was argued by counsel; and thereupon, upon consideration of the premises, it was ordered, adjudged, and decreed—

First. That the allegations and averments in the complainant's bill of complaint, so far as they are material to the relief prayed for, are true.

Second. That the mortgage or deed of trust, dated February 15, 1879, made by the St. Louis, Kansas City and Northern Railway Company to the complainant, United States Trust Company of New York, of which a true copy is annexed to the original bill
121 filed in this cause as Exhibit "A," is a valid conveyance of the railroad, franchises, and property of the said corporation therein mentioned, known as the Omaha Division, for the security of the mortgage bond- therein set forth; that the said bonds were duly issued and the same and the proceeds thereof lawfully disposed of, and that said mortgage is a first lien upon all the premises and property therein described.

Third. That the defendant, The St. Louis, Kansas City and Northern Railway Company, and its successor, the defendant, The Wabash, St. Louis and Pacific Railway Company, made default in the pay-

ment of the interest on said mortgage bonds which became due on the first day of April, 1885, and also made default in payment of the several instalments of interest upon the said bonds which became due and payable on the first day of October, 1885, and April,
1886, respectively, and that since the first day of October,
122 1884, no part of said interest has been paid.

Fourth. That by the terms of said bonds and the said mortgage securing the same the principal of the said bonds had, before the filing of the bill of complaint in this cause, become due and payable.

Fifth. That the amount of the principal of said bonds now outstanding and due and payable is the sum of two million three hundred and fifty thousand dollars, and that the amount of interest thereon which has become and remained due and payable is, at the date of this decree, the sum of three hundred and forty-nine thousand two hundred and eighteen $\frac{60}{100}$ dollars.

Sixth. That the premises and property described in said
123 mortgage cannot be sold in parcels without loss and prejudice to all parties interested therein, and that the nature and situation of such property and premises are such that the interest of all the parties requires that they should be sold as an entirety.

Seventh. That the defendant-, The Wabash, St. Louis and Pacific Railway Company or The St. Louis, Kansas City and Northern Railway Company, within thirty days after the entry of this decree, pay into this court the amount ascertained and herein declared to be due from the said companies to the holders of the bonds issued under the said mortgage, together with interest from this date, at the rate of seven per cent. per annum, and with the costs in this cause.

Eighth. That in default of such payment the equity of redemption and all right, title, and interest of the said defendants,
124 The Wabash, St. Louis and Pacific Railway Company and The St. Louis, Kansas City and Northern Railway Company, and of all the defendants in this cause in and to the said mortgage property and premises, be forever barred and foreclosed, and that all and singular the said premises and property described in the said mortgage made to the complainant as follows, namely: All and every part and parcel of the continuous line of railroad aforesaid, and all right, title, and interest therein as now owned, leased, and held by the said St. Louis, Kansas City and Northern Railway Company or its successor, The Wabash, St. Louis and Pacific Railway Company, commencing at said Elm Flats, near Pattonsburg, in the State of Missouri, and extending through the counties of
Daviess, Gentry, Nodaway, and Atchison, in said State of
125 Missouri, and through the counties of Page, Fremont, Mills, and Pottawattamie, in the State of Iowa, to the city of Council Bluffs, in said State, as said railroad now is or may be hereafter constructed, maintained, operated, or acquired, together with all the privileges, rights, franchises, real estate, right of way, depots, depot grounds, side tracks, water-tanks, engines, cars, and other appurtenances thereto belonging, be sold at public auction by Henry H.

Trimble, Esq., who is hereby appointed special master in chancery of this court, at the front door of the building in which the Federal courts are held, in the city of Council Bluffs, Iowa, at twelve o'clock noon on such day as said master shall appoint, with power to said master for proper cause to postpone said sale without further notice save an advertisement of such postponement by the master at the time fixed for such sale; that the said master give notice
126 of the time, place, and terms of sale and of the property to be sold, by advertisement thereof at least once a week in two newspapers, one published in the city of New York and the other published in the city of Council Bluffs, Iowa, for the space of six successive weeks prior to the said sale; that said mortgaged property and premises be sold absolutely and without the privilege of redemption and free, clear, and discharged of and from all leases made by any of the defendants.

Ninth. That said sale be made upon the following terms, to wit: Twenty-five thousand dollars to be paid in cash to the said master in chancery by an approved bidder at the time of sale, and the remainder thereof upon the confirmation by this court of such sale, either in cash or in the said first-mortgage bonds of the St.
127 Louis, Kansas City and Northern Railway Company, above described, at par, with accrued interest, including interest upon the unpaid coupons thereon from the respective dates of maturity thereof, the said bonds and coupons, if such sale be for less than the amount due on said bonds, to be taken as equivalent to so much in cash of the said purchase-money as would be distributable and payable thereon.

Tenth. That the said master in chancery forthwith report the sale and proceedings under this decree to this court with all convenient speed, and that upon the confirmation thereof and the full payment of the purchase-money therefor the said master in chancery, by a proper deed, convey to the purchaser or purchasers at such
128 sale, or his or their assigns, the said premises and property hereinbefore directed to be sold, which said deed, when so made, shall vest in the grantee or grantees all the right, title, estate, interest, property, and equity of redemption of, in, and to all and singular the real and personal estate, property, premises, and franchises therein described, in fee simple forever, and shall entitle the said grantee or grantees, upon compliance with the provisions of such sale, to the possession of said premises and property, and shall be a perpetual bar, both in law and in equity, to the defendants in this action and each and every of them and all persons claiming under them or any of them subsequently to the commencement of this action, of, in, or to or in respect of said property, premises, and franchises so sold and conveyed and each and every part thereof.

129 Eleventh. That upon presentation to them respectively of the said master's deed or a copy thereof the defendants, The Wabash, St. Louis and Pacific Railway Company and The St. Louis, Kansas City and Northern Railway Company execute, acknowledge, and deliver to the grantee or grantees named in said master's deed releases and quitclaims of all their right, title, and interest of every

nature in and to the property and premises described in said master's deed and every part thereof.

Twelfth. That the receiver heretofore appointed herein remain in possession of the mortgaged premises and continue to operate the same after the sale thereof, and until the conveyance thereof shall keep a correct account of the earnings and income of the premises accruing after the date of sale, and if the sale shall be
130 confirmed the purchaser, on delivery of possession by the receiver, shall be entitled to receive the net income and earnings accruing subsequent to the date of sale, and the proceeds of such income and earnings.

Thirteenth. That the said master in chancery pay the proceeds of such sale hereby directed into court, to be applied to the payment of the cost and expenses of such sale; of all the costs and disbursements in this cause, including all fees and allowances to be made for services rendered by the clerk, marshal, master, or others in the prosecution of this suit; of all allowances to be made by this court for solicitors' and counsel fees herein; of the fees and compensation to be paid to Thomas McKissock, the receiver herein, and all expenses of his receivership; of the allowance and compensation to be paid to the complainant herein, United States Trust Com-
131 pany of New York, for the services rendered by it as trustees under the said mortgage, and that the balance of such proceeds be applied equally to the payment *pro rata* of all of the first-mortgage bonds so far as the balance of such proceeds will permit.

Fourteenth. That the question of the liability of the Wabash, St. Louis and Pacific Railway Company and Solon Humphreys and Thomas E. Tutt, individually and as receivers of the said Wabash, St. Louis and Pacific Railway Company, for rental or for balance of earnings or otherwise, while in possession of the mortgaged property and premises, and any claim of said receivers against said property as stated in their answer to the bill of complaint and cross-bill by them filed herein, and the division and equitable apportion-
132 ment of rolling stock and equipment between the said Omaha Division and the Wabash, St. Louis and Pacific Railway, together with all intervening petitions against the receiver, heretofore filed or to be filed herein, be reserved and held for advisement and decision by this court, and for such further orders as may be necessary, anything in this decree to the contrary notwithstanding; and if any liability be adjudged against said Solon Humphreys and Thomas E. Tutt, individually or as receivers of said Wabash, St. Louis and Pacific Railway Company, the same shall be applied to the payment of any deficiency that may arise after the application of the net proceeds of the sale herein ordered on account of the bonds secured by the mortgage above described, and this court hereby reserves jurisdiction concerning all the matters hereinabove reserved and all intervening petitions, whether now pending
133 or hereafter to be filed therein, claiming legal or equitable liens.

Fifteenth. That the defendants, The Wabash, St. Louis and Pacific Railway Company and The St. Louis, Kansas City and Northern

Railway Company, are liable for the amount of any deficiency that may arise in the payment of said bonds and coupons after the application thereto of the balance of the net proceeds of sale of said property and premises as hereinbefore directed.

Sixteenth. That the complainant present this decree to the circuit court of the United States for the western district of Missouri, entertaining aucillary jurisdiction of this cause, and pray that the same be approved by the said court and entered as the decree thereof.

(Signed) J. M. LOVE, *Judge.*

Entered October 7th, 1886.

134 Afterwards, on the 19th day of January, A. D. 1887, there was filed in the office of the clerk of the said United States court a master's report of sale in words and figures following, to wit:

135 In the Circuit Court of the United States for the Southern District of Iowa, Western Division Thereof. In Equity.

UNITED STATES TRUST COMPANY OF NEW YORK, Complainant, *against* WABASH, ST. LOUIS AND PACIFIC RAILWAY Company, St. Louis, Kansas City and Northern Railway Company, Central Trust Company of New York, James Cheney, Mercantile Trust Company of New York, St. Louis, Iron Mountain and Southern Railway Company, and Solon Humphreys and Thomas E. Tutt, as Receivers of said Wabash, St. Louis and Pacific Railway, Defendants.	Number 140.

136 To the honorable the judges of the said court:

The undersigned, Henry H. Trimble, the special master in chancery of the said court appointed in and by a decree thereof made and entered in the above-entitled cause on the seventh day of October, 1886, respectfully reports—

That it was in said decree, amongst other things, ordered, adjudged, and decreed that in default of the payment within thirty days thereafter of the sum of two million six hundred and fourty-nine thousand two hundred and eighteen and $\frac{60}{100}$ dollars ($2,649,218.60) and interest thereon from the date of the said decree by the defendants, The St. Louis, Kansas City and Northern Railway Company and The Wabash, St. Louis and Pacific Railway Company, for the use of the holders of the bonds therein described, the

137 equity of redemption of the said defendants, The St. Louis, Kansas City and Northern Railway Company and The Wabash, St. Louis and Pacific Railway Company, and of all the defendants in this cause in and to the hereinafter-described mortgaged premises and property be forever barred and foreclosed, and that all and singular the premises and property described in the

mortgage made to the complainant and as follows, namely, all and every part and parcel of a certain continuous line of railroad, and all right, title, and interest therein as now owned, leased, and held by the said St. Louis, Kansas City and Northern Railway Company or its successor, the said Wabash, St. Louis and Pacific Railway Company, commencing at Elm Flats, near Pattonsburg, in the State of Missouri, and extending through the counties of
138 Daviess, Gentry, Nodaway, and Atchison, in said State of Missouri, and through the counties of Page, Fremont, Mills, and Pottawattamie, in the State of Iowa, to the city of Council Bluffs, in said State, as said railroad now is or may be hereafter constructed, maintained, operated, or acquired, together with all the privileges, rights, franchises, real estate, right of way, depots, depot grounds, side tracks, water-tanks, engines, cars, and other appurtenances, be sold as an entirety and absolutely and without the privilege of redemption, at public auction, by the undersigned, who was, as aforesaid, thereby appointed special master in chancery of this court, at the front door of the building in which the Federal courts are held, in the city of Council Bluffs, Iowa, on such day as said special master in chancery should appoint, after first giving notice of the
139 time, place, and terms of sale and of the property to be sold, by advertisement at least once a week in two newspapers, one published in the city of New York and the other published in the city of Council Bluffs, Iowa, for the space of six successive weeks prior to the said sale; all of which will more fully and at large appear, reference being hereby had to the said decree.

That default was made by the defendants and each of them in the payment of the said sum of two million six hundred and forty-nine thousand two hundred and eighteen and $\frac{60}{100}$ dollars (2,649,218.60), and every part thereof, which said default continued for the period of thirty days and upwards after the entry of the said decree; whereupon and in accordance with the said decree the undersigned, as such special master in chancery, did appoint as
140 the day of such sale the twenty-eighth (28th) day of December, 1886, and in pursuance of such appointment did advertise the premises and property in the said decree, and hereinabovementioned and described, for sale at public auction to the highest and best bidder, in the New York Times, a newspaper of general circulation published daily in the city of New York, once a week for six weeks in succession, the date of the first paper containing the said advertisement being the tenth day of November, 1886, and the date of the last paper containing the same being the twenty-second day of December, 1886, and did also advertise the said premises and property in the Council Bluffs Daily Globe, a newspaper of general circulation published in the city of Council Bluffs, Iowa, the date of the first paper containing the said advertisement being the tenth day of November, 1886, and the date of the last
141 paper containing the same being the twenty-second day of December, 1886, the said advertisements and each of them having been published for more than six consecutive weeks, to wit, on seven successive Wednesdays in the six weeks prior to the said

day of sale, as appears by a duly certified copy of each of the said advertisements, which said certified copies are hereunto annexed and made a part hereof.

That at the hour, day, and place named, fixed, and mentioned in the said advertisements of sale, to wit, at the hour of twelve o'clock noon on the twenty-eighth (28th) day of December, 1886, at the front door of the building in which the Federal courts are held, in the city of Council Bluffs, Iowa, the undersigned, as such special master in chancery, did offer for sale as an entirety the prem-
142 ises and property in the said decree and advertisement and hereinabove mentioned and described, at public auction, to the highest and best bidder, absolutely and without privilege of redemption, and in accordance with the terms and conditions mentioned in the said decree and advertisement, and there and then struck off and sold the same to John H. Beach, James E. Pulsford, James H. Smith, Charles S. Smith, James F. Dwight, and George Warren Smith, the committee of the first-mortgage bondholders of the St. Louis, Kansas City and Northern Railway Company, Omaha Division, and their successors or survivors, for the sum of one million four hundred thousand dollars ($1,400,000), that sum being the highest and best sum bid for the said premises and property, and the said John H. Beach, James E. Pulsford, James H. Smith,
143 Charles S. Smith, James F. Dwight, and George Warren Smith, the committee of the first-mortgage bondholders aforesaid, being the highest and best bidders therefor.

And, as provided in the said decree, the said purchasers have paid over to the undersigned, as such special master in chancery, upon account of their said bid, the sum of twenty-five thousand dollars ($25,000) in cash, for which sum the undersigned has given his receipt to said purchasers.

All of which is respectfully submitted.

H. H. TRIMBALL,
Special Master in Chancery of the Circuit Court of the United States for the Southern District of Iowa, Western Division.

Dated at Council Bluffs, Iowa, December 28th, A. D. 1886.

144 STATE OF IOWA, *Pottawattamie County,* } *ss:*

UNITED STATES TRUST CO. OF N. Y.
vs.
WABASH, ST. LOUIS & PACIFIC R'Y CO. *et al.*

I, C. M. Maynard, on my oath, do solemnly swear I am manager of the Council Bluffs Daily Globe, a newspaper issued daily and printed & published in said city of Council Bluffs, Iowa; that the annexed notice was published in said newspaper for seven consecutive weeks as follows: The first publication thereof beginning on the 10th day of November, 1886; the second on the 17th day of Nov., 1886; the third on the 24th day of Nov., 1886, and the fourth on the 1st day

of Dec., 1886; 5th, on the 8th day of Dec.; 6th, on the 15th day of Dec.; 7th, on the 22nd day of Dec., 1886.

C. M. MAYNARD.

145 Signed in my presence by said C. M. Maynard and by him sworn to before me this 27th day of Dec., A. D. 1886.

Witness my hand and notarial seal.

F. M. HUNTER.
U. S. Commissioner.

Special Master's Sale.

In the Circuit Court of the United States for the Southern District of Iowa, Western Division thereof.

UNITED STATES TRUST COMPANY OF NEW YORK, Complainant, *against* WABASH, ST. LOUIS AND PACIFIC RAILway Company and Others, Defendants.	September Term, 1886. In Equity. Number 140.

Notice is hereby given that under and in pursuance of a
146 decree entered in the above-entitled cause by the circuit court of the United States for the southern district of Iowa, western division thereof, on the 7th day of October, 1886, I, Henry H. Trimball, the special master in chancery named in said decree, will sell to the highest and best bidder, at public auction, at the front door of the building in which the Federal courts are held, in the city of Council Bluffs, Iowa, at twelve o'clock noon on the twenty-eighth (28th) day of December, A. D. 1886, all and singular the railroad, premises, and property known as the Omaha Division of the St. Louis, Kansas City and Northern Railway Company, or the Wabash, St. Louis and Pacific Railway Company, said premises and property being described in said decree as follows, namely:

All and every part and parcel of the continuous line of
147 railroad aforesaid and all right, title, and interest therein as now owned, leased, and held by the said St. Louis, Kansas City and Northern Railway Company or its successors, The Wabash, St. Louis and Pacific Railway Company, commencing at said Elm Flats, near Pattonsburg, in the State of Missouri, and extending through the counties of Daviess, Gentry, Nodaway, and Atchison, in the State of Missouri, and through the counties of Page, Fremont, Mills, and Pottawattamie, in the State of Iowa, to the city of Council Bluffs, in said State, as said railroad now is or may be hereafter constructed, maintained, operated, or acquired, together with all the privileges, rights, franchises, real estate, right of way, depots, depot grounds, side tracks, water-tanks, engines, cars, and other appurtenances thereunto belonging.

The foregoing premises and property will be sold abso-
148 lutely and without the privilege of redemption and free, clear, and discharged of and from all leases made by any of the defendants.

Said premises and property will be sold as an entirety and upon the following terms and conditions: Twenty-five thousand dollars ($25,000) must be paid in cash to the special master by an approved bidder at the time of sale, and, if the sale be confirmed by the court, the balance of the purchase-money upon the confirmation of such sale by the court, either in cash or in the first-mortgage Omaha Division bonds of the St. Louis, Kansas City and Northern Railway Company, as provided in said decree.

The said bonds and the overdue coupons thereon will be received in payment of the balance of the purchase-money bid at such sale as equivalent to so much of the said purchase-money as will
149 be distributable and *and* payable thereon.

For a more particular description of the property and premises to be sold as aforesaid and the terms and conditions of sale reference is hereby made to the said decree now on file in this cause.

Dated November 9, 1886.

HENRY H. TRIMBLE,
Special Master in Chancery.

THEODORE SHELDON,
Complainant's Solicitor.

150 STATE OF NEW YORK, }
City and County of New York, } *ss:*

Theodore L. Peverelly, being duly sworn, saith that he is principal clerk in the office of the New York Times, a newspaper printed and published in the city of New York; that the advertisement hereto annexed has been regularly published in the said New York Times once a week for six weeks, seven times successively, to wit, on the 10th, 17th, and 24th days of November, and December 1st, 8th, 15th, and 22nd, 1886.

THEODORE L. PEVERELLY.

Sworn to before me this 22 day of December, 1886.
[SEAL.] EUGENE C. MANBORGNE,
Notary Public (192), *N. Y. Co.*

151 *Special Master's Sale.*

In the Circuit Court of the United States for the Southern District of Iowa, Western Division thereof.

UNITED STATES TRUST COMPANY OF NEW YORK, Complainant, *against* WABASH, ST. LOUIS AND PACIFIC RAILWAY Company and Others, Defendants.	September Term, 1886. In Equity. Number 140.

Notice is hereby given that under and in pursuance of a decree entered in the above-entitled cause by the circuit court of the United

States for the southern district of Iowa, western division thereof, on the 7th day of October, 1886, I, Henry H. Trimble, the special master in chancery named in said decree, will sell to the highest and best bidder, at public auction, at the front door of the building in which the Federal courts are held in the city of Council Bluffs,
152 Iowa, at twelve o'clock noon on the twenty-eight- (28th) day of December, A. D. 1886, all and singular the railroad, premises, and property known as the Omaha Division of the St. Louis, Kansas City and Northern Railway Company, said premises and property being described in said decree as follows, namely: All and every part and parcel of the continuous line of railroad aforesaid and all right, title, and interest therein as now owned, leased, and held by the said St. Louis, Kansas City and Northern Railway Company or its successors, The Wabash, St. Louis and Pacific Railway Company, commencing at said Elm Flats, near Pattonsburg, in the State of Missouri, and extending through the counties of Daviess, Gentry, Nodaway, and Atchison, in the State of Missouri, and through the counties of Page, Fremont, Mills, and Pottawattamie, in the State of Iowa, to the city of Council Bluffs, in said
153 State, as said railroad now is or may be hereafter constructed, maintained, operated, or acquired, together with all the privileges, rights, franchises, real estate, right of way, depots, depot grounds, side tracks, water-tanks, engines, cars, and other appurtenances thereunto belonging.

The foregoing premises and property will be sold absolutely and without the privilege of redemption and free, clear, and discharged of and from all leases made by any of the defendants.

Said premises and property will be sold as an entirety and upon the following terms and conditions: Twenty-five thousand dollars ($25,000) must be paid in cash to the special master by an approved bidder at the time of sale, and, if the sale be confirmed by the court, the balance of the purchase-money upon the confirmation
154 of such sale by the court, either in cash or in the first-mortgage Omaha Division bonds of the St. Louis, Kansas City and Northern Railway Company, as provided in said decree. The said bonds and the overdue coupons thereon will be received in payment of the balance of the purchase-money bid at such sale as equivalent to so much of the said purchase-money as will be distributable and payable thereon.

For a more particular description of the property and premises to be sold as aforesaid and the terms and conditions of sale reference is hereby made to the aforesaid decree now on file in this cause.

Dated November 9th, 1886.

HENRY H. TRIMBALL,
Special Master in Chancery.

THEODORE SHELDON,
Complainant's Solicitor.

155 Filed Jan. 19, 1887.

H. K. LOVE, *Clerk.*

156 Afterwards, on the 21st day of February, A. D. 1887, there was filed and entered of record in the office of the clerk of said court an order of the judge thereof in words and figures following, to wit:

157 In the Circuit Court of the United States for the Southern District of Iowa, Western Division thereof.

UNITED STATES TRUST COMPANY OF NEW YORK, Complainant, *against* THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others, Defendants.	In Equity. No. 140.

And now, February nineteenth, 1887, this cause coming on to be further heard upon the report of sale filed herein on the nineteenth day of January, 1887, by Henry H. Trimble, Esquire, special master, appointed in and by the decree made and entered herein on the 7th day of October, 1886, and it appearing to the court that the said special master's report of sale has been on file for upwards of thirty days, and that no exceptions thereto have been taken or filed by
158 any of the parties hereto, and the same having been argued by counsel, and the court having been fully advised, thereupon, upon consideration of the premises, it is ordered, adjudged, and decreed—

I. That the sale mentioned in the said report of the special master and the said report be, and the same hereby are, in all things approved and confirmed.

II. That the said special master do execute and deliver to John H. Beach, James E. Pulsford, James H. Smith, Charles S. Smith, James F. Dwight, and George Warren Smith, the purchasers of the said premises and property, a deed of conveyance of the railroad, property, premises, and franchises so sold to them upon the said purchasers paying to the said special master the balance of
159 the bid so made—that is to say, the sum of one million three hundred and seventy-five thousand dollars ($1,375,000)—and thereupon possession of the railroad, premises, and franchises mentioned and described in the said decree and report of sale shall vest in the said purchasers, and the receiver heretofore appointed in this action shall thereupon hand over and deliver to them the said railroad, property, premises, and franchises.

III. That the said special master do make report to this court of all his actions hereunder.

J. M. LOVE, *Judge.*

Filed February 21st, 1887.

H. K. LOVE, *Clerk.*

160 Afterwards, on the 29th day of March, A. D. 1887, the same being the 2d day of the regular March term, A. D. 1887, there was an order signed, filed, and entered of record therein in words and figures following, to wit:

161 In the Circuit Court of the United States for the Southern District of Iowa, Western Division thereof.

UNITED STATES TRUST COMPANY OF NEW YORK, Complainant, *against* THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others, Defendants.	In Equity. No. 140. March Term, 1887.

And now, March twenty-ninth, 1887, this cause coming on to be further heard upon the report of sale filed herein on the nineteenth day of January, 1887, by Henry H. Trimble, Esquire, special master, appointed in and by the decree made and entered herein on the 7th day of October, 1886, and it appearing to the court that the said special master's report of sale has been on file for upwards of
162 thirty days, and that no exceptions thereto have been taken or filed by any of the parties hereto, and the same having been argued by counsel in open court, and the court having been fully advised, thereupon, upon consideration of the premises, it is ordered, adjudged, and decreed—

1st. That the sale mentioned in the report of the special master and the said report be, and the same hereby are, in all things approved and confirmed.

2nd. That the said special master do execute and deliver to John H. Beach, James E. Pulsford, James H. Smith, Charles S. Smith, James F. Dwight, and George Warren Smith, the purchasers of the said premises and property, a deed of conveyance of the rail-
163 road, property, premises, and franchises so sold to them upon the said purchasers paying to the said special master the balance of the bid so made—that is to say, the sum of one million three hundred and seventy-five thousand dollars ($1,375,000)—and thereupon possession of the railroad, premises, property, and franchises mentioned and described in the said decree and report of sale shall vest in the said purchasers, and the receiver heretofore appointed in this action shall thereupon hand over and deliver to them the said railroad, property, premises, and franchises.

3rd. That the said special master retain out of the money now or hereafter standing to the credit of this action the sum of sixteen hundred dollars for his fees and compensation herein, and thereupon pay out of said money as follows:

164 (1st.) To the clerk of this court his costs.

(2nd.) To Theodore Sheldon, solicitor for the complainant, his taxed costs and the further sum of four thousand dollars as a counsel fee.

(3rd.) To William A. W. Stewart, counsel for the complainant, the sum of eight thousand dollars, as a counsel fee.

(4th.) To The United States Trust Company of New York, the complainant, as a just and reasonable compensation to it for its services as trustee of the mortgage foreclosed in this action, the sum of four thousand dollars, and the further sum of five hundred and seventy

and $\frac{9}{100}$ dollars, being the balance of expenses and disbursements heretofore incurred by it in the execution of said trust and remaining unpaid.

4th. That after making the payments aforesaid the said
165 special master do then apply the entire balance remaining in his hands ratable on account of the principal and interest of the Omaha Division bonds of the St. Louis, Kansas City and Northern Railway Company outstanding, secured by the mortgage or deed of trust dated February 15th, 1879, executed by the said railway company to the complainant herein, The United States Trust Company of New York, as trustee, as directed in and by the thirteenth paragraph of the decree of October seventh, 1886, aforesaid.

5th. That the said special master do make a report to this court of all his actions hereunder.

J. M. LOVE, *Judge.*

Filed March 29, 1887.

H. K. LOVE, *Clerk.*

166 Be it remembered that on the 11th day of October, A. D. 1886, there was filed in the office of the clerk of the said United States court and in the aforesaid cause a petition of intervention in words and figures following to wit:

167 In the Circuit Court of the United States, Southern District of Iowa, Western Division.

UNITED STATES TRUST COMPANY OF NEW YORK
against
WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others. } In Equity.

To the honorable the judges of said court:

Your petitioner, Thomas McKissock, heretofore appointed receiver in this cause, respectfully shows unto your honors that by a
168 certain order heretofore entered herein on the 3rd day of March, 1886, the defendants, Solon Humphreys and Thomas E. Tutt, receiver- of the Wabash, St. Louis and Pacific railway, were ordered to transfer to your petitioner all and singular the premises and property described in the mortgage made to the complainant herein, dated February 15, 1879, a copy of which is annexed to said complainant's bill of complaint, and to which your petitioner hereby refers and prays that the same may be taken as though attached to this his petition.

That shortly after the execution of said mortgage the Wabash, St. Louis and Pacific Railway Company, the successor to the St. Louis, Kansas City and Northern railway, did, out of the proceeds of the sale of the bonds secured by the said mortgage and together with the railway companies hereinafter named, erect and build
169 in the city of Council Bluffs, Iowa, at a cost of $280,000, a large elevator for the storage and handling of grain to be

transported over its line of railway; that said elevator is owned in common by the Wabash, St. Louis and Pacific Railway Company, the Chicago, Milwaukee and St. Paul Railway Company, the Chicago, Rock Island and Pacific Railway Company, the Chicago, Burlington and Quincy Railroad Company, and the Kansas City, St. Joseph and Council Bluffs Railway Company, each of the said six railroad companies owning an equal undivided one-sixth interest in the said elevator; that the said elevator is in form owned by a corporation created by the laws of the State of Iowa and known as the Union Elevator Company, the capital stock of which is the sum of $280,000, and one-sixth of which capital stock is owned by each of the railroad companies aforesaid, amounting to $46,666, which, as to
170 each of said companies, is fully paid up except as to the Wabash, St. Louis and Pacific Railway Company; that the interest of said latter company in said elevator is fully paid up except the sum of $5,000, which said sum is still due upon its said stock, by reason whereof no certificate of stock has ever been issued to said railroad company.

That the erection and maintenance of said elevator was necessary to the operation of the line of railroad of the said Wabash, St. Louis and Pacific Railway Company, as well as of the said other companies, and no grain could be received or handled by the said Wabash, St. Louis and Pacific Railway Company without first providing and maintaining such an elevator; that the city of Council Bluffs is the terminus of said railway and is a large grain centre, and
171 that there is not nor ever has been in said city any other elevator, and that said elevator is immediately connected with the main line of railway of the said Wabash, St. Louis and Pacific Railway Company.

That the said elevator was constructed solely for the purpose of storing and handling grain to be transported over the said six lines of railroad and thereby increasing the business of said lines, and is now and ever since has been solely used by said six companies for that and no other purpose, and was and is a common appurtenance to the said railways; and the sixth interest therein of the said Wabash, St. Louis and Pacific Railway Company was and is an appurtenance belonging to its line of railway, and was and is covered and conveyed by the complainant's mortgage aforesaid, and was intended to form and did form a part of the said mort-
172 gage security.

That the defendants, Solon Humphreys and Thomas E. Tutt, were, on the 29th day of May, 1884, by the circuit court of the United States for the eastern district of Missouri, appointed receivers of all of the property of the said Wabash, St. Louis and Pacific Railway Company, including all the security conveyed to the complainant in this cause by the mortgage hereinbefore referred to; that in said cause and upon a cross-bill filed therein by the defendant, The Central Trust Company of New York, for the foreclosure of a mortgage known as the "general mortgage" there was entered January 6, 1886, a decree of sale, wherein, amongst other things, it was de-

creed that the said one-sixth interest of the said Wabash, St.
173 Louis and Pacific Railway Company in the said elevator at Council Bluffs was subject to the lien of the said "general mortgage," and was also subject to the prior lien thereon of the said mortgage to the complainant, and directed the same, together with other property therein specified, to be sold, subject to the lien thereon of said complainant's mortgage, and the proceeds applied to the payment of said "general mortgage," a copy of which decree your petitioner will produce upon the hearing hereof.

That in accordance with the said order of this court of March 3, 1886, the said Wabash receivers have in the main complied with the instructions of this court and delivered to your petitioner in the main all the property described in said mortgage to the complainant, and your petitioner is now and has been since March 6,
174 1886, in the possession and enjoyment of the said one-sixth interest in said elevator formerly belonging to the said Wabash, St. Louis and Pacific Railway Company.

That the said Union Elevator Company is and ever since your petitioner's appointment has been ready to issue the proper certificate of stock in said elevator company to your petitioner upon the payment to it of the said sum of $5,000 and production of the consent thereto in writing of the said Wabash receivers, but the said Wabash receivers neglect and refuse to consent thereto for the reason, as your petitioner is informed, that the said interest in said elevator is not conveyed by the complainant's mortgage.

That your petitioner as such receiver has duly tendered to said elevator company the said sum of $5,000 and requested the
175 issue to him of the proper certificate of stock, but the said elevator company refuse to receive said sum or issue said certificate of stock for the reason aforesaid.

Wherefore your petitioner, in view of the facts aforesaid, prays the advice and direction of your honors in the premises, and that your honors will order the said Wabash receivers to execute and deliver to your petitioner proper assignment of the interest of the said Wabash, St. Louis and Pacific Railway Company or of themselves as such receivers in the said elevator, and upon the receipt of the said assignment that your petitioner, out of the funds now in his hands, pay to said Union Elevator Company the said sum of $5,000 and receive the proper certificate of stock in the said company.

176 And your petitioner will ever pray.

THOMAS McKISSOCK, *Receiver*,
By THEODORE SHELDON,
His Solicitor.

THEODORE SHELDON,
Solicitor for Receiver.

STATE OF IOWA, }
County of Pottawattamie. }

W. L. Bedison, being duly sworn, upon his oath says that he is the auditor and general manager of Thomas McKissock, the petitioner named in the foregoing petition; that he has read the same

and believes the facts therein stated to be true, and that this verification is made by him because said McKissock is now absent from the State of Iowa.

W. L. BEDISON.

177 Subscribed and sworn to before me this 6 day of October, 1886.

[SEAL.] T. A. KIRKLAND,
Notary Public.

Filed Oct. 11th, 1886.

H. K. LOVE, *Clerk.*

178 Afterwards, on the 11th day of October, A. D. 1886, there was filed in the office of the clerk of said court an order of reference in words and figures following to wit:

179 In the United States Circuit Court, Southern Dist., Western Division.

UNITED STATES TRUST COMPANY OF NEW YORK *against* WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others.	No. 140. Sept. Term, 1886.

Upon reading and filing the petition of Thomas McKissock, heretofore appointed receiver in this cause, praying instructions concerning an interest in the elevator at Council Bluffs, Iowa, it is ordered that said petition be referred to F. M. Hunter, Esquire, as special commissioner (there being no master in chancery of this court residing within this division) to take proofs thereon and to report the same, together with his findings, both of law and fact, to this court.

It is further ordered that a copy of this order be served upon Wells H. Blodgett, Esquire, solicitor for Solon Humphreys
180 and Thomas E. Tutt, receivers of the Wabash, St. Louis, and Pacific Railway Company, within ten days after the date hereof, and that said Humphreys and Tutt, as such receivers, appear and answer said petition before the first Monday in November, 1886.

J. M. LOVE, *Judge.*

Filed Oct. 11th, 1886.

H. K. LOVE, *Clerk.*

181 Afterwards, on the 2d day of November, A. D. 1886, there was filed in the office of the clerk of said court an affidavit in words and figures following, to wit:

182 United States Circuit Court in and for the Southern District, Western Division, of Iowa.

UNITED STATES TRUST COMPANY OF NEW YORK
vs.
WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY.

In the matter of the intervening petition of Thos. McKissock, praying an assignment of interest in elevators at Council Bluffs, Iowa.

STATE OF IOWA, *Pottawattamie County,* } *ss:*

I, F. M. Hunter, being first duly sworn, on oath depose and say that I accept the matter of reference of above cause as made
183 by the honorable court on the 11th day of October, A. D. 1886; that I will well and faithfully hear and examine the same and a just and true report thereof make according to the best of my understanding and ability, so help me God.

F. M. HUNTER.

Subscribed in my presence and sworn to before me by F. M. Hunter this 2 day of November, A. D. 1886.

J. J. STEWART,
[SEAL.] *Notary Public in and for said County.*

184 Afterwards, on the 8th day of November, A. D. 1886, there was filed in the office of the clerk of said court an answer to said petition of intervention in words and figures following, to wit:

185 In the Circuit Court of the United States, Southern District of Iowa, Western Division.

UNITED STATES TRUST COMPANY OF NEW YORK
against
WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others. } In Equity.

The Answer of Solon Humphreys and Thomas E. Tutt, Receivers, to the Intervening Petition of Thomas McKissock, Receiver.

186 Said receivers, reserving to themselves all right of exceptions to said intervening petition, for answer thereto say:

1. They admit it to be true that on the 3rd day of March, 1886, they were ordered to transfer to said intervenor all and singular the premises and property described in the mortgage of February 15th, 1879, attached to complainant's bill.

2. That as to whether the St. Louis, Kansas City and Northern Railway Company, together with other railway companies, at a cost of $280,000.00 or any other sum, erected at Council Bluffs, Iowa, an elevator for the storage of grain, or as to whether said elevator is owned in common by the Wabash, St. Louis and Pacific Railway

Company and the other railway companies in said intervening petition named, or as to what the capital stock in said elevator is, or whether the same is fully paid up or not, or as to whether the erection and maintenance of said elevator was necessary to the operation of said Wabash, St. Louis and Pacific railway, or as to whether the city of Council Bluffs is a grain center, or whether there has ever been in said city any other elevator, or whether said elevator was constructed and is now used solely for the purpose of storing and handling grain over said lines of railway, they have no knowledge or information thereof, save as they are advised by said intervening petition.

3. They deny that said elevator was and is covered by complainant's mortgage of February 15th, 1879, or that it was intended to form or that it did form a part of said mortgage security.

4. They admit they were appointed receivers of said Wabash, St. Louis and Pacific Railway Company on the 27th day of May, 1884, by the circuit court of the United States for the eastern district of Missouri, and further admit that a decree of sale was entered in said court January 6th, 1886, in which whatever interest said Wabash, St. Louis and Pacific Railway Company then owned in said elevator in said city of Council Bluffs was specified and included.

5. And said receivers, further answering, deny that intervenor is entitled to the relief or any part thereof in said intervening petition prayed for, and pray the same advantage of this answer as if they had pleaded or demurred to said intervening petition, and pray to be hence dismissed with their reasonable cost and charges in this behalf most wrongfully expended.

SOLON HUMPHREYS,
THOMAS E. TUTT, *Receiver-*,
By H. S. PRIEST,
GEO. S. GERRER, *Sol'rs.*

Filed Nov. 8th, 1886.

H. K. LOVE, *Clerk.*

Afterwards, on the 12th day of March, A. D. 1887, there was filed in the office of the clerk of said United States court the report of the said special commissioner, in words and figures following, to wit:

191 In the Circuit — of the United States in and for the Southern District, Western Division, of Iowa.

UNITED STATES TRUST COMPANY OF NEW YORK
vs.
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*
} In Chancery.

In the matter of the intervening petition of Thos. McKissock, praying recovery of interest in elevator at Council Bluffs, Iowa.

Commissioner's Report.

192 AT OFFICE, COUNCIL BLUFFS, IOWA.

To the hon. judges of the abovesaid court:

In pursuance of an order of reference made in the above-entitled cause on the 11th day of October, A. D. 1886, a copy of which is hereto annexed, concerning the matters and things declared upon in the intervening petition of Thos. McKissock, praying recovery of interest in elevator at Council Bluffs, Iowa, I, the undersigned commissioner, therein appointed, and to whom the matter was referred, beg leave respectfully to submit the following as my findings of facts and conclusions of law:

On or about the 15th day of February, A. D. 1879, the St.
193 Louis, Kansas City and Northern Railway Company, a corporation created by and existing under the laws of the State of Missouri, made, executed, and delivered its two thousand three hundred and fifty bonds, bearing date April 1st, A. D. 1879, each for the sum of one thousand dollars, due forty years after date, with interest at 7 per cent. per annum, made payable to the United States Trust Company, complainant.

On said 15th day of February, A. D. 1879, the said St. Louis, Kansas City and Northern Railway Company, being the owner and in possession of a line of railroad extending in a northwesterly direction from a point known as Elm Flats, near Pattonsburg, in the county of Daviess, State of Missouri, to the boundary line between the States of Missouri and Iowa, and in possession as lessee for a term of years of a line of railroad extending from the city of
194 Council Bluffs, State of Iowa, in a southerly direction to the same point on said boundary line, at which place the two said lines of railroad intersect and connect with each other, forming a continuous line of railroad extending from said Elm Flats, Missouri, to Council Bluffs, Iowa, known and will hereafter be referred to as "the Omaha Division" of the Wabash, St. Louis and Pacific Railway Company. For the purpose of securing the payment of said bonds and the faithful performance upon its part of the conditions and stipulations in them contained the said St. Louis, Kansas City and Northern Railway Company made, executed, and delivered to the said United States Trust Company of New York, as trustee, a

trust deed conveying unto the said trust company all of its right, title, and interest in and to the above-described line of rail-
195 road as the same "was at the time or might be thereafter constructed, maintained, operated, or acquired, together with all of the privileges, rights, franchises, real estate, right of way, depots, depot grounds, side tracks, water-tanks, engines, cars, and other appurtenances thereto belonging."

Subsequently, on the 10th day of November, A. D. 1879, the said St. Louis, Kansas City and Northern Railway Company and other railway companies consolidated and incorporated under the name and style of The Wabash, St. Louis and Pacific Railway Company, defendants herein, which, by the terms of said consolidation, received and took possession of all of the property, rights, and benefits and assumed all liabilities and obligations of the railway companies thus consolidated, including the said bonded indebtedness,
196 according to the terms and provisions thereof, and the said St. Louis, Kansas City and Northern Railway Company on that day ceased to exist.

Subsequently and during the year A. D. 1881 the said Wabash, St. Louis and Pacific Railway Company, successor to the St. Louis, Kansas City and Northern Railway Company, did, together with the Union Pacific Railway Company, the Chicago and Northwestern Railway Company, the Chicago, Milwaukee and St. Paul Railway Company, the Chicago, Rock Island and Pacific Railway Company, and the Chicago, Burlington and Quincy Railway Company, erect and build a large elevator in the city of Council Bluffs, Iowa.

That said elevator was constructed *as* is owned in form by
197 a corporation created under the laws of the State of Iowa and known as the Union Elevator Company, but that said Union Elevator Company was created by said six railroad companies and each company is the owner of one-sixth of the capital stock therein.

That the capital stock of the said Union Elevator Company is fixed at $500,000.

That the costs of the construction of said elevator was $280,000.

That the subscription to this capital stock by each of the above railroad companies, including the Wabash, St. Louis and Pacific Railway Company, was in reality one-sixth of the costs of the construction of the said elevator, to wit, $280,000, and not one-sixth of the capital stock, to wit, $500,000.

198 That the one-sixth interest of the Wabash, St. Louis and Pacific Railway Company amounted to $46,666.66, all of which has been paid up by the said company excepting the sum of $5,000, which is as yet unpaid.

That by the terms of the incorporation of the said Union Elevator Company no certificate of stock should issue to either of the said incorporators or railroad companies until such company should pay its proportion of the costs of the construction of said elevator; that by reason of the failure to pay the balance of its proportion of the costs of construction of said elevator, to wit, the sum of $5,000, no certificate of stock has been issued to the Wabash, St. Louis and

Pacific Railway Company, but upon payment of that amount
199 the said railroad company will be entitled to a certificate of stock representing in amount one-sixth of the capital stock of the said Union Elevator Company and representing a like proportion of said elevator.

That the city of Council Bluffs is the terminus of said railway, "Omaha Division," and is a large grain centre, and that said elevator is the only one in said city, and is immediately connected with the main line of railway of the said Wabash, St. Louis and Pacific Railway Company.

That the Wabash, St. Louis and Pacific Railway Company and its successors ship large quantities of grain over the said "Omaha Division" out of the city of Council Bluffs, Iowa.

That the said elevator was solely erected and maintained
200 for the purpose of storage and handling of grain to be transported over the said six lines of railroad, thereby increasing the business of the same.

That the erection and maintenance of such an elevator by the said Wabash, St. Louis and Pacific Railway Company at Council Bluffs is and was necessary to the proper conduct of its business as shippers of grain, and its handling and shipping of grain could not be successfully carried on at Council Bluffs without the advantages afforded by a grain elevator.

That the defendants, Solon Humphreys and Thos. E. Tutt, were, — the 29th day of May, 1884, by the circuit court of the United States in and for the eastern district of Missouri, appointed receivers of all the property of the Wabash, St. Louis and Pacific Rail-
201 way Company, including the said "Omaha Division," and all other property covered by the mortgage of complainant sued on herein, and as such took possession thereof.

That on or about the 1st day of March, A. D. 1886, this court, having jurisdiction of the parties and subject-matter in this cause, among other things ordered and directed that the Wabash, St. Louis and Pacific Railway Company, its agents and employees, and the said receivers, Solon Humphreys and Thomas E. Tutt, should, on the 6th day of March, A. D. 1886, transfer and surrender to the intervenor herein, Thomas McKissock, all and singular the premises and property described in complainant's said mortgage, and on the sixth day of March, A. D. 1886, said railway company and
202 said receivers in the main complied with the said order of this court, turning over with other property the said one-sixth interest in said elevators, not absolutely as property covered by said mortgage, but for use only, and it was so received by the intervenor, Thos. McKissock, who is now in possession thereof.

As my conclusions of law I respectfully submit—

That the said elevator was and is a common appurtenance to the said railways, and the sixth interest therein of the Wabash, St. Louis and Pacific Railway Company was and is an appurtenance belonging to its line of railway and was and is covered and conveyed by complainant's mortgage, and that it forms a part of the said mortgage security.

203 Thereupon I respectfully recommend that an order be made by this honorable court ordering and directing the said Wabash, St. Louis and Pacific Railway Company and said receivers, Solon Humphreys and Thomas E. Tutt, to execute and deliver to the intervenor, Thos. McKissock, receiver, a proper assignment of the interest of the said Wabash, St. Louis and Pacific Railway Company and the said receivers to said elevators, and upon receipt thereof by the intervenor, Thos. McKissock, receiver, out of the funds now in his hands he pay to the said Union Elevator Company the said sum of $5,000, the amount due from the Wabash, St. Louis and Pacific Railway Company upon its interest in said elevators, and receive the proper certificate of stock in the said Union Elevator
204 Company and proportionate interest in said elevators.

That the intervening petition herein alleges that on January 6th, A. D. 1886, there was entered by the circuit court of — United States in and for the eastern district of Missouri a decree in a case wherein the parties to this action were parties, establishing the lien of the mortgage in controversy herein as a first and prior incumbrance upon the said one-sixth interest in said elevator; such allegation is not denied in pleadings, and that there is no evidence in the case, except the allegations of the pleadings as to the proportionate amount of the cost of the elevator paid by the respective divisions of the Wabash, St. Louis and Pacific railway system.

All of which, together with the pleadings and proofs relating to this application, are respectfully submitted to the court.

F. M. HUNTER,
Special Commissioner.

205 Wabash, St. Louis & Pacific railway,
Law department.
Wells H. Blodgett, general solicitor, St. Louis.

ST. LOUIS, *January 26th*, 1887.

F. M. Hunter, Esq., Council Bluffs, Iowa.

DEAR SIR: Yours of 15th inst., transmitting me copy of evidence taken before you by intervenor, McKissock, concerning the elevator at Council Bluffs and the insurance upon the hotel at Stansbury, received.

After a careful examination of the copies of evidence you enclosed I have concluded that I will neither cross-examine inte-venor's witnesses nor offer in these two matters any evidence on behalf
206 of receivors, Humphreys and Tutt, and upon the information that the inte-venor closes his case with the evidence which you enclosed, I will say that I close on behalf of Humphreys and Tutt.

Yours truly,

H. S. PRIEST.

In the Circuit Court of the United States in and for the Southern District of Iowa, Western Division, at Council Bluffs.

UNITED STATES TRUST COMPANY OF NEW YORK, Complainant,
vs.
WABASH, St. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*, Defendants.

207 In the matter of intervening petition of Thomas McKissock, receiver, for recovery of interest in elevators at Council Bluffs.

Deposition.

JAMES F. HOW, witness called on behalf of the intervenor herein, residing in the city of St. Louis, in the State of Missouri, more than one hundred miles from the place where this cause is to tried, being duly cautioned and sworn to tell the truth and being carefully examined, deposes and saith as follows, to wit:

Direct examination by THEODORE SHELDON Esqr.:

1 Q. You may state your name, residence, and occupation.

A. My name is James F. How; I reside in St. Louis, Mis-
208 souri, and am general agent for the receivers of the Wabash, St. Louis and Pacific railway.

2 Q. How long have you been such agent for the receivers of the Wabash, St. Louis and Pacific railway?

A. Since their appointment.

3 Q. You may state your connection theretofore with the Wabash, St. Louis and Pacific Railway.

A. I was secretary of the Wabash from the time of its organization up to almost the time the receivers were appointed, and for a portion of the time I was one of the vice-presidents of the Wabash.

4 Q. Were you ever connected with the St. Louis, Kansas City and Northern Railway Company; and if so, in what capacity and for how long?

A. I was connected with the St. Louis, Kansas City and
209 Northern Railway Company as secretary all the time during its existence, and part of the time was one of its vice-presidents.

5 Q. Were you the secretary of the St. Louis, Kansas City and Northern Railway Company at the time of the execution of the mortgage upon the Omaha Division described in the bill of complaint in this cause?

A. Yes, sir.

6 Q. And as such secretary did you assist in the execution of that mortgage?

A. Yes, sir.

7 Q. Are you familiar with the property known as the "Omaha Division" of the St. Louis, Kansas City and Northern Railway Company?

A. I am.

8 Q. Do you know of there being built in the city of Council
210 Bluffs an elevator in which the Wabash Company or the St. Louis, Kansas City and Northern Railway Company were interested in any way?

A. I know of an elevator being built there in which the Wabash Company was interested.

9 Q. When was that built?

A. I don't remember the exact date now; I think it was in 1880 or in 1881.

10 Q. Was it built by the Wabash Railway Company?

A. It was built by a stock company.

11 Q. What was the name of the stock company?

A. I think it was called the "Union Elevator Company." The Wabash was one of its stockholders.

12 Q. Do you remember the amount of stock?

A. The amount of authorized stock was five hundred thousand dollars.

211 13 Q. How much was actually issued?

A. No certificate has ever been issued for the amount paid by the Wabash Company on account of its stock, and I cannot say whether any certificates have ever been issued to any of the stockholders.

14 Q. How much stock did the Wabash Company subscribe for?

A. The Wabash Company, through its vice-president, Mr. Hopkins, subscribed for an amount not to exceed one hundred thousand dollars. I think that is the way the subscription read, the understanding being that it would take one-fifth of the stock. It was not known at the time what the elevator would cost, but it was understood that one-fifth of the stock would not exceed that amount, $100,000.

212 15 Q. Who were the other stockholders?

A. The other four roads running into Council Bluffs; that was my understanding. Each road was to take one-fifth of the stock.

16 Q. Do you remember the names of those four roads?

A. The Rock Island road, the Milwaukee and St. Paul, the Chicago, Burlington and Quincy, and the Chicago and Northwestern road.

17 Q. Those four roads, together with the Wabash, St. Louis and Pacific, were the only stockholders?

A. That is my understanding.

18 Q. Was there a written agreement that each should take one-fifth?

A. There may have been enough stock retained to qualify the directors besides, but I do not now remember how that was.

213 19 Q. Was there any agreement in writing that the elevator should be owned by these five roads in equal parts?

A. I do not remember how that was. As I have stated, my remembrance is that there was such an agreement, but whether it was in writing or verbal I do not remember.

20 Q. How much has the Wabash Company paid on account of its subscription?

A. The Wabash Company has paid $41,666.66, which was all that they had been called upon to pay up to the time the receivers were appointed.

21 Q. Was that its full share, one-fifth, of the expenses of building and operating the elevator down to that time?

A. It was so understood at the time that that was its full proportion, and that no more would be required.

214 22 Q. Has there, since that time, a demand been made upon the receivers for a further amount?

A. Yes, sir; there has been a demand made for $5,000.

23 Q. As a further assessment?

A. Yes, sir; as a further assessment upon the subscription for the stock.

24 Q. Has any certificate of stock ever been issued to the Wabash receivers or to the Wabash Company?

A. No, sir; when this deman- was made it was accompanied with the promise that the certificate for the whole amount paid by the Wabash Company, as well as for this $5,000, would be issued upon payment of the $5,000.

25 Q. When was the $41,666.66 paid; do you remember the date?

A. It was paid from time to time; different payments were made, but I haven't the figures here.

215 26 Q. Running along from time to time during the building of the elevator until the appointment of the receivers?

A. It was paid some time before the appointment of the receivers, but I do not remember exactly when.

27 Q. Do you know why no certificate for the stock was ever issued to the Wabash Company or to its receivers?

A. No; I made demand from time to time, as secretary of the Wabash Company, for a certificate of stock, and the reply was that the company was not then ready to issue certificates to any one; and no offer was ever made to issue certificates until the call was made upon the receivers for this $5,000, accompanied with the promise to issue a certificate upon its payment.

28 Q. And you understood that upon the payment of this
216 five thousand dollars a certificate will be issued for what amount?

A. For one-fifth of the stock of the whole elevator, $46,666.66.

29 Q. Do you know what amount the other four roads have each paid?

A. I only know from the information received from the secretary of the elevator company. He stated that they had paid $46,666.66 each.

30 Q. Have the Wabash receivers declined to pay this sum of five thousand dollars?

A. No, sir; they have stated that it would be necessary to obtain an order of the court before they could pay it.

31 Q. Do you know of any application ever having been made to the court for leave to pay that sum of five thousand dollars?

203 Thereupon I respectfully recommend that an order be made by this honorable court ordering and directing the said Wabash, St. Louis and Pacific Railway Company and said receivers, Solon Humphreys and Thomas E. Tutt, to execute and deliver to the intervenor, Thos. McKissock, receiver, a proper assignment of the interest of the said Wabash, St. Louis and Pacific Railway Company and the said receivers to said elevators, and upon receipt thereof by the intervenor, Thos. McKissock, receiver, out of the funds now in his hands he pay to the said Union Elevator Company the said sum of $5,000, the amount due from the Wabash, St. Louis and Pacific Railway Company upon its interest in said elevators, and receive the proper certificate of stock in the said Union Elevator
204 Company and proportionate interest in said elevators.

That the intervening petition herein alleges that on January 6th, A. D. 1886, there was entered by the circuit court of — United States in and for the eastern district of Missouri a decree in a case wherein the parties to this action were parties, establishing the lien of the mortgage in controversy herein as a first and prior incumbrance upon the said one-sixth interest in said elevator; such allegation is not denied in pleadings, and that there is no evidence in the case, except the allegations of the pleadings as to the proportionate amount of the cost of the elevator paid by the respective divisions of the Wabash, St. Louis and Pacific railway system.

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A. Since their appointment.

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A. No; I made demand from time to time, as secretary of the Wabash Company, for a certificate of stock, and the reply was that the company was not then ready to issue certificates to any one; and no offer was ever made to issue certificates until the call was made upon the receivers for this $5,000, accompanied with the promise to issue a certificate upon its payment.

216 28 Q. And you understood that upon the payment of this five thousand dollars a certificate will be issued for what amount?

A. For one-fifth of the stock of the whole elevator, $46,666.66.

29 Q. Do you know what amount the other four roads have each paid?

A. I only know from the information received from the secretary of the elevator company. He stated that they had paid $46,666.66 each.

30 Q. Have the Wabash receivers declined to pay this sum of five thousand dollars?

A. No, sir; they have stated that it would be necessary to obtain an order of the court before they could pay it.

31 Q. Do you know of any application ever having been made to the court for leave to pay that sum of five thousand dollars?

A. I do not think that any petition has ever been filed yet; but it is understood that such a petition is to be filed.

217 32 Q. Do the receivers know that the stock is liable to be forfeited unless that payment is made?

—. No, sir; I don't think there is any probability of an-thing of that kind happening—not until the court has acted upon the matter.

33 Q. Then, if I understand you rightly, the interest of the Wabash Railway Company in this elevator is one-fifth of the entire property, and for that one-fifth they have paid $41,666, and since the payment of that sum an assessment of $5,000 additional has been made which has not yet been paid. Is that the case?

A. That is my understanding. I would say in connection with this assessment of five thousand dollars it was the understanding of the Wabash Company that they would not be called upon for anything in excess of this $41,666.66, and from information received from the officers of the elevator company they

218 supposed that this amount paid in full *or* their one-fifth of the elevator, but subsequently, after the appointment of the receivers, they learned from the officers of the elevator company that there were certain debts existing against the elevator company which would require the payment of five thousand dollars from each of the five stockholders of the company in order to liquidate this indebtedness, and they declined to issue any stock to any one of them until they made this payment of $5,000. Whether they had a legal right to do this or not—of course that is a matter I am not prepared to pass upon.

34 Q. Was there any agreement in writing or otherwise between the five stockholders in any way limiting them or any of

219 them in the transfer of this stock or this interest in the elevator?

A. I do not remember of any such agreement.

35 Q. Have you a copy of the agreement under which this elevator was built?

A. No, sir.

36 Q. You are familiar, are you not, with the operation of grain elevators in connection with railroads?

A. Well, I do not know to what extent I am familar with it. I know something about it.

37 Q. Being familiar with the grain traf-ic conducted by the Wabash system, you know something about it, more or less, I suppose?

A. I know something about it in that way; yes.

38 Q. What is the object of a grain elevator?

A. There are several objects. I suppose one object is to draw grain to the place where it is located. I suppose that is the

220 principal object, to draw grain to the place where it is located by reason of the facilities an elevator offers to shippers of grain.

39 Q. That is one of the results, is it not? What is the object of the elevator itself?

A. I suppose the object is to make money.

40 Q. Of what benefit is a grain elevator in the handling of grain?

A. Why, of course, with it grain can be handled with more economy than without it, both as regards expense and time; and then you can handle it cheaper with an elevator.

41 Q. Is it not one of the chief objects to transfer grain from car to car and store it meanwhile?

A. That is one of the objects, of course.

42. Q. Is not that one of the main objects?

A. The transfer of grain from car to car can be effected
221 without an elevator, but it would be much more expensive; and therefore I say that an elevator can handle it with more economy, and in the storage of grain, of course, as it prevents the cars being detaided and held; and then, too, you can load the cars with greater facility, and in that way economize time and thus save money.

43 Q. Cannot grain be much more readily transferred from car to car by means of an elevator?

A. Yes, sir.

44 Q. And do not these grain elevators sometimes furnish safe storage for grain in transit?

A. Yes, sir.

45 Q. How were the expenses of the Union Elevator Company paid?

A. The Union elevator, as I understood it, was leased as soon as it was built, almost before it was completed, to a company which has been operating it, I think, ever since.

222 46 Q. Have you ever been supplied with a copy of that lease?

A. I don't think I have.

47 Q. Has the Wabash Company ever assented to that lease?

A. My impression is that the directors made the lease; that is my understanding, the directors of the elevator company.

48 Q. By authority of the stockholders, I suppose?

A. I do not know how that was.

49 Q. Have you in — possession a copy of that lease?

A. I do not think I have.

50 Q. When was it made?

A. I could not say. I do not remember that I ever saw a copy of that lease.

51 Q. You are not, then, very familiar with the actual operation of the elevator?

223 A. I only know what I have stated—that is, that it is my impression, or my understanding, that it was leased.

52 Q. But, notwithstanding the lease, is it not the case that the Wabash Company have always had the use of the elevator?

A. No, sir.

53 Q. What?

A. The use of the elevator?

54 Q. Yes.

A. No, sir; no more than any other shipper; no; I do not understand that the Wabash Company has had the use of the elevator.

55 Q. This elevator has not been used by the Wabash Company since it was built, I understand you to say?

A. If you mean as regards running our cars into it, yes, sir; we have used it just as all the other roads running to Council Bluffs have used it.

224 56 Q. What other roads do you mean—the other four roads owning the elevators?

A. I mean any road running into Council Bluffs has the same privilege of using it that we have.

57 Q. Are there any roads besides the five you have named?

A. The Union Pacific uses it.

58 Q. For freight going in the other directions?

A. For grain coming from the other directions or for grain going in the other direction.

59 Q. You mean the Union Pacific uses it for grain going west, do you not?

A. The Union Pacific uses it for grain going in either direction.

60 Q. Does the Wabash Company own any other elevator?

A. They don't own this elevators; they own a number of small elevators along the line of the road.

225 61 Q. They own one-fifth of this elevator, do they not?

A. Yes, sir; the Wabash owns one-fifth of this elevator.

62 Q. Can you state approximately how many elevators the Wabash either owns wholly or in part?

A. They own, I think, at least a dozen small elevators, though they are called elevators by courtesy more than for any other reason. They cost from twenty-five hundred to, possibly, five thousand dollars.

63 Q. They only differ from the Union elevator in degree, do they not?

A. In a very great degree.

64 Q. And the object in the construction of them was that you could more readily, cheaply, and easily handle the grain traf-ic, was it not?

A. That was the object; yes, sir.

226 65 Q. Could grain be handled by a railroad company without the use of elevators?

A. Yes, sir.

66 Q. Could it be handled as cheaply as by the assistance of elevators?

A. No; it could not be handled as economically.

67 Q. Has the Wabash Company ever since its formation handled large quantities of grain?

A. Yes, sir.

68 Q. Could that grain handled by the Wabash Company have been handled as cheaply without elevators?

A. Of course at some places there is not enough grain handled at any one time to justify having an elevator, and at other places

there is so much handled that it is a great deal more economical to have elevators.

69 Q. To which one of these two classes does the city of Council Bluffs belong?

227 A. It belongs to the latter class.

70 Q. Is it necessary for the management of the grain business done by the Wabash Company to have an elevator at Council Bluffs?

A. It is very much to their advantage to have an elevator there.

71 Q. That is, it is to their pecuniary advantage?

A. Yes, sir.

72 Q. In other words they save money by having an elevator there?

A. Yes, sir.

73 Q. Is not a grain elevator a mere grain freight depot constructed in a peculiar way to render the handling of grain more easy?

A. If you mean by depot as appurtenant to a railroad I would say no.

228 74 Q. What is the difference between a building erected for the handling and storage of ordinary freight and a building erected for the handling and storage of grain, each being erected to increase the traffic of the road?

A. Well, there is this difference: You may get along without a building erected for the handling of grain, you cannot get along without the building erected for handling of freight—that is, a freight depot. Now, in my testimony when I say it is for the benefit of a railroad to have a grain elevator I might also say it is for the benefit of the railroad to have a sugar refinery in a town or any manufactory in a town, and still none of these things are appurtenant to the railroad.

75 Q. They are not necessary to the railroad?

A. They are not necessary, but it is to the advantage of a road to have them.

229 76 Q. Can you estimate roughly the loss the Wabash Railroad Company would have incurred during the five years that the elevator has been in operation had there been no elevator in the city of Council Bluffs to which the Wabash Company could have had access?

A. No, sir; I could not.

77 Q. It would amount to a very large sum of money, would it not?

A. It is impossible for me to say how much.

78 Q. Was it not the case, however, that at the time this elevator was built the directors of the Wabash railroad considered it necessary that one should be built there?

A. They felt that it would increase the business of the road if there was one there.

230 79 Q. It was necessary to that increase of the business, was it not?

A. It aided in the increase of the business; yes, sir.

80 Q. Was it not necessary for that practically increase of business?

A. You might say it was necessary *in* increase the business from that source to have an elevator there; yes, sir.

81 Q. Can you estimate roughly the amount of grain, eastern bound, that leaves the Council Bluffs elevator per year—the tonnage?

A. No, sir; I cannot without looking at the figures.

82 Q. Is it not the case that more than half of the east-bound business going over the Wabash railroad leaving Council
231 Bluffs comes through the Council Bluffs' elevator?

A. I cannot say.

83 Q. What would be your best judgement on that question?

A. I do not know; I can say that a very large proportion of the business that comes from Council Bluffs goes through that elevator.

84 Q. Does not all the grain coming from Council Bluffs over the Wabash railroad come through this elevator?

A. I think not all of it.

85 Q. Does not all of it except the amount of grain grown on the line of the road south of Council Bluffs?

A. I think not, sir; sometimes the cars loaded in Nebraska go right through, but the great bulk from Council Bluffs comes through that elevator.

232 86 Q. Is not Council Bluffs, as far as the Wabash railway system is concerned, a grain centre?

A. Yes, sir; but it is not more of a grain centre than a great many other places, though it is a grain centre.

87 Q. Does not the Wabash railway receive annually more grain through this elevator at Council Bluffs than it does at any other one point on its entire system?

A. I think not.

88 Q. At what other point on the Wabash system is more grain received than at Council Bluffs?

A. St. Louis exceeds it.

89 Q. I mean received for the purpose of transportation over the system?

A. I think St. Louis receives more.

233 90 Q. St. Louis is in the middle of the system?

A. Yes, sir; but we get it for transportation over the system.

91 Q. You mean to say that more grain is received at St. Louis to transport over the Wabash system than at Council Bluffs?

A. I think so.

92 Q. Where is it grown?

A. In the West; it is grown in Kansas, in Missouri, and in Iowa.

93 Q. And brought here by other roads?

A. No, sir; not all of it; a great deal of it is brought here by our road.

94 Q. Then you don't understand the question. My question is this: Is there any point besides Council Bluffs at which grain
234 is received by the Wabash road for transportation over it or

any part of it in larger amounts than is received at Council Bluffs?

A. I could not answer that question without an examination of the record.

95 Q. Would not your best judgment be to the effect that the two largest points on the Wabash road, west of the Mississippi river, for the reception of grain are Kansas City and Council Bluffs?

A. Well, I should think St. Joe would be classed in the same category. The grain coming from St. Joe does not, a great deal of it, go through any elevator at all; it passes right into the Wabash road in the cars.

96 Q. Do I understand you to say, then, that Kansas City, St. Joe, and Council Bluffs are the several largest points west
235 of the river for the reception of grain?

A. Yes, sir.

97 Q. Which of these is the largest?

A. Kansas City.

98 Q. Which next?

A. I am not able to say whether St. Joe or Council Bluffs would be the next.

99 Q. The grain received at Council Bluffs is for the most part transported to Toledo or Detroit, is it not?

A. That I am unable to say without an examination of the record. The route of grain changes so often from time to time that I cannot say without an examination of the records what it was in any one year.

100 Q. But your impression is that the grain received at
236 Council Bluffs is transported by the Wabash over its entire line?

A. A great deal of the grain received at all, of all the places I have mentioned, is transported over the entire Wabash system.

101 Q. Including Council Bluffs among the places?

A. Yes, sir.

102 Q. Does not the Wabash road receive at Council Bluffs the grain grown at all points west and northwest of Omaha?

A. Not all of them; you don't mean at all points.

103 Q. I mean all large points.

A. They receive grain at Council Bluffs from the west and northwest of Omaha.

104 Q. From various points?

A. Yes, sir.

237 105 Q. West and northwest of Omaha?

A. Yes, sir.

106 Q. Omaha, then, or rather Council Bluffs, is the northwestern outlet or inlet to the Wabash system of all grain grown west and northwest of Omaha, is it not?

A. Yes, sir.

107 Q. If these other four roads in Council Bluffs, which you have named had severally or jointly grain elevators for the handling and storage of grain and the Wabash had none, or the use of none,

could the Wabash Company compete with the other roads in the handling of grain; and, if so, to what extent?

A. I think they would suffer very materially in the competition.

108 Q. Would it not be almost a total loss of the grain
238 traffic at that point?

A. We would lose a great proportion of the grain we are now hauling from that point.

109 Q. Four-fifths of it?

A. That is guess-work. I think we would lose a large proportion of it—the largest proportion.

110 Q. You would lose the greatest portion of it, would you not?

A. I think we would suffer to a great extent.

111 Q. Now, is — not the case that to the extent of the loss to the Wabash road which would result if it had no elevator at Council Bluffs—is it not the case that to that extent this elevator is a necessity?

A. Yes, sir; I think I have stated before that this elevator secures a great deal of the grain business that otherwise we would
239 not get; but as to what proportion of the business we would not get if we did not have this elevator or some other elevator there I cannot say. I think if that elevator was not there some other elevator would be built that we could use.

112 Q. But the question I put to you was based on the supposition that there would be no elevator there?

A. All large shipping points have elevators, and we have as great facilities at such places as we have at Council Bluffs, though we are not stockhold-s in the elevators.

114 Q. Is there any other elevator at Council Bluffs?

A. No, sir.

115 Q. Was there any other elevator there at the time this was built?

A. No, sir.

240 116 Q. Do you or do you not say that the building and use of this elevator has increased the value of the Omaha Division as a railroad?

A. Mr. PRIEST: I object to the question because it is incompetent and for the reason that it presumes to ask the opinion of the witness upon the question of law whether this elevator is part and parcel of the Omaha Division of the Wabash road.

Col. HOW: I would say it has—that is, if matters had existed as they were before this elevator was built; but if the elevator had not been built in Council Bluffs I think the Omaha Division would have carried its proportion—that is, it would have taken grain out of there in the same ratio that it has carried grain out since the building of the elevator. The building of the elevator, I think,
241 has increased the business of all lines running out of Council Bluffs.

117 Q. Admit for the sake of the question that the elevator at Council Bluffs is part of the railroad property known as the Omaha

Division, did or did not the building and use of the elevator increase the value of the Omaha Division as a railroad?

A. I think the building of the elevator there, just as the erection of any other large shipping institution in a town, has increased the value of *the* every railroad running into the town to a certain extent.

118 Q. And among the roads so benefited is included this?

A. Yes, sir; of course, ours, among the others, has been benefited.

119 Q. And the same result precisely would follow, would it not, from putting a first-class equipment of rolling stock upon the Omaha Division—that is, it would increase its value—that is
242 to say, render the property able to produce an income?

A. Well, I hardly know how to answer that question any differently from what I have answered it already. I would say that the erection of the elevator at Council Bluffs is a help to the Omaha Division just as it is a help to every other road running into that town.

120 Q. Its use is also a help to the Omaha Division, is it not?

A. Yes, sir.

121 Q. Adds to the business?

A. Yes, sir; of course.

122 Q. If the Omaha Division by this proceeding in the court were deprived of this elevator just to that extent the line would be damaged, would it not?

A. I do not see how this proceeding can deprive the Omaha Division of the elevator. Any railroad running into that city has the right to use that elevator, whether it owns any stock in the elevator company or not.

243 123 Q. Admitting, for the sake of the argument, that the result of this proceeding would be to deprive the Omaha Division of the use of this elevator at Council Bluffs, is it not the case that thereby the Omaha Division would be seriously damaged?

Objected to by Mr. Priest as presuming a state of facts that do not exist.

Col. How: I would say in reply to that that any condition of affairs that you could imagine that would prevent that road or any road running into Council Bluffs from using that elevator would injure the business of the road; and if the Omaha Division was deprived of the use of the elevator it would suffer very materially.

124 Q. Suppose that it should be determined in this proceeding that the one-fifth interest claimed to be owned by the Wabash Company in this elevator belonged to the purchasing committee,
244 and that this purchasing committee, together with the four other roads owning the property, should decide to exclude the Omaha Division from the use of the elevator, would not that decision materially damage the Omaha Division if carried out?

A. I think if any such decision were reached it would not be permitted for a moment.

125 Q. That is not an answer to my question.

A. Well, as I have stated before, if any condition of affairs could be imagined by which the Omaha Division or any of the roads would be deprived of the use of the elevator, the Omaha Division or the road would suffer materially.

126 Q. Then you state in answer to my question that if such a state of affairs as I have supposed did exist, resulting in the exclusion of the Omaha Division from the use of the elevator, that
245 it would cause great damage to that road?

A. Unquestionably.

127 Q. That would practically deprive it of all grain traf-ic?

A. Of a very great proportion of it; yes, sir; if some other elevator were not built.

128 Q. What was the object of the directors of the Wabash Railway Company in having a common elevator? Would not the same result have been obtained by the erection of five different elevators at Council Bluffs?

A. I have never heard the directors of the road express any opinion on that subject.

129 Q. Do you not yourself think that the chief object was to reduce the expense?

A. I suppose that would be an object.

246 130 Q. Do you know of any other reason?

A. No; I do not think of any other reason now.

131 Q. So far as you know, that was the sole cause, was it not?

A. I say I do not know what the reason was.

132 Q. So far as you know, that was the sole reason why these five roads built a common elevator, was it not?

A. That is the only reason I can imagine, but I do not know anything about it.

133 Q. You do know, do you not, as a railroad man, that the five roads could construct that elevator jointly and each receive from it the same amount of benefit they would derive if owning seperate elevators, and that the entire cost of erection would be very
247 much less than if five seperate elevators had been erected?

A. That is true.

134 Q. The cost would be about one-fifth less?

A. I cannot say how much less.

135 Q. Is not the present arrangement of owning the elevator jointly equivalent in all practical results to each road having its own elevator and operating it itself?

A. I cannot answer that question without seeing the lease and understanding the terms on which the elevator is leased.

136 Q. You mean the lease from the elevator company to the parties who are now running it?

A. Yes, sir.

137 Q. As far as you know anything to the contrary in that lease, is not that the case?

A. No; I do not think it is.

248 138 Q. In what respect would there be a difference?

A. If each road owned an elevator it could substantially control the handling of all grain that came to the elevator and so

could get their proportion of the tra-fic, but as it is they cannot control the shipment of grain out of the elevator, and it is the case that the grain that goes into that elevator is not always equally divided for shipment.

139 Q. But does not each road under the present arrangement absolutely control the grain shipped through that elevator to it precisely as if it had an elevator of its own?

A. Any grain shipped to it, of course, it controls, just as if it were billed to any one else, but there is a great deal of grain that goes into this elevator that is not consigned to any particular road, and the road having the best facilities gets it.

249 140 Q. Then, with that exception, the result is practically the same, is it not, in it- operation as if each road had its own elevator?

A. As far as all grain consigned to each road is concerned, of course, it is just the same.

141 Q. Is it not a common thing among railroad companies in America to have ordinary freight depots built and operated jointly just as this elevator is—I mean ordinary freight depots for the handling and storage of ordinary freight, not grain?

A. At junction points it is a common thing for railroads to have common depots.

142 Q. Council Bluffs is what you would call a junction point, is it not?

A. Well, it is not what I mean by junction point. I would
250 call that a terminal point; it is customary for railroads crossing each other and having stations at such points to work together in common—that is, it is done very often; it is not an universal thing, but it is done often.

143 Q. Is it not done in a large majority of cases where railroads cross each other?

A. No, sir; I think it is the exception where it is done. I know it is the exception and not the rule that it is done, so far as the Wabash railroad is concerned.

144 Q. But you know it is frequently done for the purpose of saving expense?

A. It is frequently done, but it is not usual. It is the exception and not the rule.

145 Q. Now, would you not also say that it is frequently done at terminal points as well as at junctions?

251 A. Not frequently, though it is sometimes done.

146 Q. Is it not done at Kansas City on the Wabash road?

A. No, sir.

147 Q. They have no building in common that they use with other roads—no freight depot?

A. No, sir.

148 Q. At what other points on the Wabash system is there a similar arrangement for freight depots?

A. Well, it is done at the R. and L. junction. It is done at Forest with the T., P. & W. It is done at Peru with the I., P. & C.; but

at no large stations I can now remember has the Wabash freight depots in common with other roads.

149 Q. It is frequently done on other roads that you know of, is it not?

252 Answer. No, sir; if it is, it is the exception. As a rule, it is not done.

150 Q. But you do know of cases where it was done besides on the Wabash?

A. Yes, sir; similar to those cases I have mentioned on the Wabash.

151 Q. Is it not the case, Col. How, that where two roads, by reason of having junction or terminal points in common, can use the same property with every facility for each in the same manner in which this elevator was used they have a similar arrangement to this elevator with regard to depots for the purpose of saving expense?

A. I have no remembrance now of *and* two railroad companies having a freight depot under the same arrangement as this elevator. A railroad company would have no object in having a depot run in the same way. This elevator is run by outside parties, and

253 certainly a railroad company would not consent to deputize some outside company to handle their freight in a freight depot as grain is handled.

152 Q. You mean to say that by virtue of this lease of the Union Elevator Company at Council Bluffs that these five railroads have lost entire control of their elevator?

A. I mean to say that, so far as the operation of the elevator is concerned, they have lost control of it; they are stockholders of the company. My understanding of it is that each of them subscribed for a certain amount of stock for an elevator there in order that grain should be drawn to Council Bluffs and in order that there could be a place to store the grain and a place where they

254 could get it and handle it in a manner more economical than the transfer from car to car, and besides that they have no other interest except as stockholders.

153 Q. Well, stockholders usually own the property of the company, do they not?

Objected to as incompetent.

A. Of course they own the stock of the company, but stockholders do not always control the property of the company after it has been leased.

154 Q. They control it through their directors?

A. In making the lease I suppose they did.

155 Q. Do you know whether by the terms of the lease the lessee acquired the power to keep any one of these five roads out of the —?

A. No, sir; I do not think so; I do not believe an elevator could be built where any road running into the town could be kept

255 out of it if they could reach it.

156 Q. Is it not very common amongst railroad companies, where property is owned jointly and used jointly, to form separate

corporations for the purpose of more economically and efficiently handling the property, as was done in the case of this elevator?

A. I am trying to recall a case, but fail to do so, that is similar to this.

157 Q. Do you know of any like corporations formed for passenger-depot purposes, commonly known as union depots?

A. I know of numerous union depots in which the various roads are stockholders, but there the similarity ceases.

158 Q. In what respect do they differ?

A. In the case of union depots the railroads themselves,
256 through their representatives in the board, operate the depots; they do not lease it to some concern that is to make money out of it.

159 Q. Don't they frequently lease part of the building?

A. Yes, sir; they let parts of the building.

160 Q. That is the only difference that occurs to you now between union depots, what are commonly called union depots, and this elevator?

A. I think there is a very great difference between the two.

(22.) (There is no page "23.")—M. F. Watts, N. P.

161 Q. But you cannot now recall any other difference than the one you have just stated?

A. I do not recall any similarity between them except that the railroads are stockholders in each

257 162 Q. Do you recall any other difference than the one you have just stated?

A. Yes; the railroads have equal rights in union depots.

163 Q. Have not these five roads equal rights in this elevator at Council Bluffs?

A. I think the roads are subject to the control of the parties to whom they have leased the elevator; they do not lease a union depot.

164 Q. I think you have stated that the chief and, in fact, the only object that railroads have in building elevators, freight depots, and union depots and using them in common is to save expense, have you not?

A. I said that was the principal object I could see, and to furnish better facilities for handling passenger business in the case of union depots furnishing additional facilities.

258 165 Q. Does not the Wabash own other property outside of this interest in the elevator in Council Bluffs that is owned in common and used in common with other roads?

A. Yes, sir; they are stockholders in the terminals at Chicago; they are stockholders in the Hannibal and St. Joe union depot and in the Kansas City union depot.

166 Q. And at Detroit also?

A. No, sir.

167 Q. At any other point you can recall?

A. I do not at this moment recall any other point. Yes, sir; they are stockholders or were stockholders, before the sale of the

roads, in the St. Louis and New Orleans Barge Line, running between St. Louis and New Orleans.

168 Q. Do you know the exact location of this elevator at
259 Council Bluffs with regard to the right of way of the Wabash Company?

A. No, sir; I could not tell without the maps.

169 Q. I believe the Wabash receivers have been requested by Col. McKissock to transfer this interest in the elevator, have they not, or I have made the demand acting for him?

A. I believe you have; yes, sir.

Cross-examination by H. S. PRIEST, Esq.:

1 X Q. An idea was conceived of building an elevator at Council Bluffs for the storage of grain, either to be hauled to or shipped from that point, and the Rock Island, the Milwaukee and St. Paul, the Chicago, Burlington and Quincy, the Chicago and Northwestern, and the Wabash Railway Companies became stockholders of
260 the stock of a corporation to be organized for the purpose, did they not?

A. Yes, sir.

2 X Q. In an amount of stock not to exceed $100,000 each?

A. Yes, sir; that is right.

3 X Q. The cost of building the elevator had not been accurately computed at the time?

A. It had not.

4 X Q. Afterwards as such subscriber the Wabash Company paid $41,666.66?

A. Yes, sir.

5 X Q. Towards the construction of the elevator?

A. Yes, sir.

6 X Q. After the elevator was built it was leased?

A. That is my understanding of it.

7 X Q. To a company or individual who has ever since operated it?

261 A. Yes, sir.

8 X Q. The lessees have received for the operators remuneration from what source?

A. I do not know the terms of the lease. We have never received any income from the elevator, but I do not know on what terms the property is leased.

9 X Q. From what source did this $41,666.66 come that was paid by the Wabash Company for this stock?

A. From the treasury of the Wabash Company.

10 X Q. From its general funds?

A. Yes, sir; from the general funds.

11 X Q. The Union Elevator Company was organized, built this elevator, purchased the ground, and did everything, the understanding being that the railroad companies would subscribe for the stock?

A. Yes, sir.

262 12 X Q. It is charged in the bill in this case that the proceeds of the mortgage of the Omaha Division were applied in that direction. Is that true?

A. No, sir.

13 X Q. Did any part of it go in that direction?

A. No, sir; the proceeds of the mortgage on the Omaha Division did not pay for the road, for the cost of the road.

14 X Q. The elevator company purchased the ground on which the elevator was built?

A. That is my understanding. I do not know whether the ground was purchased or whether it was built on leased ground.

15 X Q. You were asked if the Wabash did not use this elevator and you answered that it did. How does it use it—as any
263 other patron of the elevator would use it?

A. Yes, sir.

16 X Q. And not otherwise?

A. Not otherwise.

17 X Q. Do you know how the Wabash has access to this elevator? Is it on any part of the track of the Omaha Division?

A. No, sir; it is not on any part of the track of the Omaha Division.

18 X Q. How far from the terminus at Council Bluffs of the Omaha Division is this elevator located?

A. Some little distance. I cannot give the exact distance. I can furnish the necessary distance if you want it. I will attach it to my deposition as part of my answer. It is more than half a mile from the Omaha Division, and is reached by the track of another road.

19 X Q. You were asked in your examination-in-chief
264 about the proportion of shipment of grain from this elevator east. What proportion of this shipment originates on the line of the Omaha Division, if any, passes through the elevator?

A. Very little, if any.

20 X Q. From what points are these shipments and where destined?

A. Destined to St. Louis, Detroit, Toledo, and Chicago generally; most of them to Detroit, Toledo, and St. Louis.

21 X Q. If the Omaha Division had not an outlet by reason of its connection with part of the Wabash system, what use would the elevator be to it?

Objected to on the ground that it omits the supposition that the Omaha Division has some other outlet than the Wabash Company furnishes.

Col. How: Not very much.

265 22 X Q. You were asked about the number of elevators along the line of the Wabash. Are they operated by the Wabash Company?

A. No, sir.

23 X Q. They are operated by individuals or companies who store grain in them for shipment in bulk?

A. Yes, sir. They are on the right of way of the road.

24 X Q. Does the Wabash own an elevator at St. Louis?

A. No, sir.

25 X Q. At Kansas City?

A. No, sir.

26 X Q. At St. Joe?

A. No, sir.

27 X Q. How do they receive their shipments of grain at the three points you have mentioned?

266 A. At St. Joe most of the grain comes in through cars. They have no elevator there. At Kansas City and St. Louis they receive grain from elevators belonging to other corporations.

28 X Q. Do any other railroads, to your knowledge, own elevators at Kansas City or St. Louis?

A. No, sir.

29 X Q. They are matters of individual enterprise or independent corporate enterprise?

A. Yes, sir.

30 X Q. I mean independent of the railroad companies?

A. Yes, sir.

31 X Q. You were asked if this elevator at Council Bluffs increased the value of the Omaha Division. It does not increase the value of this division as a railroad, does it?

267 A. It adds to the business handled by the road. That is the only way in which it increases its value. It gives the railroads large additional shipment and enables them to handle grain cheaper.

32 X Q. Has the elevator at Council Bluffs been of more advantage, substantially, to the Omaha Division than to other parts of the Wabash system over which the traffic originating on that line passed?

A. No, sir.

33 X Q. In regard to union depots at terminal points, as a rule they are independent corporations, in which the railroads are simply stockholders?

A. Yes, sir.

34 X Q. Any individual has the privilege of becoming a stockholder in any of these union depots, have they not?

268 A. No, sir; the stock is generally owned by the different railroads. The stock is generally entirely controlled by the railroads and is divided up amongst them.

35 X Q. Nothing has been paid upon the stock of the Wabash in this Council Bluffs elevator since the receivership?

A. No, sir.

Redirect examination:

1 Q. You have testified, if I remember rightly, concerning this matter in the action in the western district of Missouri, in the Federal court, for the foreclosure of what is known as the general mortgage, executed in 1880, have you not?

A. Yes, sir.

2 Q. And your testimony in that matter is on file with the master's report of proceedings taken in that case?

A. Yes, sir.

269 3 Q. Is it not the case that such proceedings have been had in that case that this interest in this elevator owned by the Wabash Company has been sold, subject to the lien of the general mortgage, along with other property and conveyed?

Objected to.

A. That is a legal question I cannot answer.

4 Q. Is it not a fact that the purchasing committee so claim?

A. I do not know. I think they do.

5 Q. You have been advised that they so claim?

A. I understand that the purchasing committee have stated that the stock belongs to them.

6 Q. Under that foreclosure procedure?

270 A. I suppose so, though they have never communicated anything to me in regard to that; but I understood from General Swaine that they claimed this stock.

7 Q. On the theory that it was covered by the general mortgage?

A. He did not enter into any particulars.

8 Q. You do know, as a matter of fact, do you not, that this one-fifth interest in this elevator was sold under that general mortgage last April?

A. I am not prepared to say.

JAMES F. HOW.

Subscribed and sworn to by the said James F. How and in my presence this first day of December, 1886.

MILLARD F. WATTS,

[SEAL.] *Notary Public, City of St. Louis, Missouri.*

271 STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Millard F. Watts, a notary public within and for the city of St. Louis, in the State of Missouri, hereby certify that on the 29th day of November, 1886, before me, at the office of Wells H. Blodgett, Esq., Equitable building, 6th and Locust streets, in said city of St. Louis, personally appeared, by consent of counsel hereinafter named, James F. How, at the hour of 3 o'clock p. m. of that day, and Theodore Sheldon, Esq., appeared as counsel for the intervenor, and H. S. Priest, Esq., appeared as counsel for the receivers of the Wabash, St. Louis and Pacific Railway Company, and the said James F. How, being by me first duly sworn to testify the whole truth and being carefully examined, deposed and said as appears by the depo-

272 sition hereto annexed

And I further certify that said deposition was then and there taken down by me in short-hand (by consent of counsel), and after it has been transcribed was subscribed and sworn to by the said witness, James F. How, and the same has been retained by me

for the purpose of sealing up and directing the same to the clerk of the court, as required by law.

And I further certify that I am not of counsel *of* attorney for either party or otherwise interested in the event of this cause.

In testimony whereof I have hereunto set my hand and notarial seal, at my office, in said city of St. Louis, this first day of December, 1886.

MILLARD F. WATTS,
Notary Public, City of St. Louis, Mo.

[SEAL.]

Filed Dec. 6, 1886.

H. K. LOVE, *Clerk.*

273 Circuit Court of the United States, Southern District of Iowa, Western Division.

UNITED STATES TRUST COMPANY OF NEW YORK
vs.
WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY.

In the matter of the intervening petition of Thomas McKissock, receivers, for recovery of interest in elevators at Council Bluffs.

STATE OF MISSOURI, *City of St. Louis,* } *ss:*

I, Millard F. Watts, a notary public within and for the said city of St. Louis, in the said State of Missouri, do hereby certify that the deposition of James F. How, heretofore taken by me in the
274 above-entitled cause and filed therein in the above-entitled court, at Council Bluffs, in the State of Iowa, was taken by consent of counsel; and I further certify that at the taking of said deposition H. S. Priest, Esq., appeared as counsel for the receivers of the Wabash, St. Louis and Pacific Rail- Company, and Theodore Sheld, Esq., appeared as counsel for the intervenor.

In testimony whereof I have hereunto set my hand and notarial seal, at my office, in said city of St. Louis, this 21st day of December, 1886.

MILLARD F. WATTS,
Notary Public, City of St. Louis, Missouri.

[SEAL.]

Filed Jan. 10th, 1887.

H. K. LOVE, *Clerk.*

275 In the Circuit Court of the United States in and for the Southern District of Iowa.

UNITED STATES TRUST COMPANY OF NEW YORK
vs.
WABASH, ST. LOUIS AND PACIFIC RAILWAY CO. *et al.*

In the matter of the intervening petition of Thos. McKissock, receiver, for recovery of interest in elevator at Council Bluffs.

Before F. M. Hunter, commissioner.

Depositions of Witnesses Called on Behalf of the Intervenor Herein Residing in the City of Council Bluffs, Iowa.

It is agreed by and between the parties hereto of record *the* the attorneys for the respondent residing in St. Louis shall
276 have the right (they not being present at the examination) to cross-examine the following witnesses at any time hereafter if they so desire.

It is also agreed that said depositions shall be taken before F. M. Hunter as commissioner, and, the same being taken in short-hand by C. H. Sholes, the reading of the same over to the witnesses and the formal signing thereof by them, as by agreement of the parties, waived.

CHARLES KIETH, of lawful age, being first duly sworn to tell the truth and being examined, deposed and answered as follows:

Direct interrogatories propounded by THEODORE SHELDON, Esq.:

Int. 1. You may state your name, residence, and occupation.

Ans. Charles Kieth; reside at Council Bluffs, Iowa; am general agent of the Burlington system.

277 Int. 2. How long have you been connected with the Burlington system?

Ans. Four years.

Int. 3. Were you connected with any railroad previous to that; if so, what road, and for how long?

Ans. I was in charge of the freight business for all the lines running to the Missouri river, at the transfer, for a year and a half. Prior to that time I was eight years and a half with the Chicago and Northwestern, and in the employment of the Union Pacific for a year and a half; three years and a half with the B. & M. in Nebraska as cashier at Lincoln. That is as long as I have been in the United States.

Int. 4. For how long a period, then, have you been connected with railroad corporations?

Ans. It is thirty-one years since I commenced with the
278 Grand Trunk railroad in Canada. I have been out of the business for three years during that time.

Int. 5. Are you familiar with the methods adopted by railroads in the United States for the handling of grain?

Ans. I think I am.

Int. 6. Do you know the elevator in Council Bluffs known as the Union elevator?

Ans. Yes.

Int. 7. Is the Burlington road, which you represent, one of the part owners of that elevator?

Ans. I understand so. I know it to be so. At least I have no acknowledgement from our vice-president that such is the case.

Int. 8. How long do you say you have been connected with the Burlington directly?

Ans. Four years, directly.

279 Int. 9. You were not here when that elevator was built, then?

Ans. Yes; I was in Council Bluffs at the time that was built, but I was connected with the Chicago and Northwestern at that time.

Int. 10. The Chicago and Northwestern is also one of the owners of that elevator, is it not?

Ans. Yes.

Int. 11. Please state briefly the necessity for the erection of such an elevator for the business of the roads running into Council Bluffs.

Ans. In my opinion, an elevator is just as much required by a railroad as a freight-house would be. It bears the same relationship to grain that a freight-house does to freight, in my opinion. Grain could not be handled in any large quantities without an elevator at any point.

280 Int. 12. Is the erection of such a grain elevator a common and necessary expenditure in order to conduct the grain business of any railroad?

Ans. Yes.

Int. 13. Please state whether or not the city of Council Bluffs, from its geographical situation, is a grain centre or a distributing point for grain moving eastward.

Ans. It is a grain centre. However, there is very little grain purchased right in the city. In fact, I do not think there have been fifty car-loads of grain in the last ten years shipped from this city—that is, from the town proper itself—but we could not handle the grain business of the Western country without an elevator. It is distributed to all points, more particularly East and South.

Int. 14. What was the object in having one large common elevator, owned and built by five roads, rather than having five seperate and distinct buildings?

281 & 282 Ans. I presume it was a question of cost; I don't know. It would be much easier for them to build and much easier reached to have only one elevator than if every road had its own.

Int. 15. Please state what, if any, difference there is between a grain elevator built and owned by a railroad and used in the operation and handling of its grain and an ordinary freight-house built and used *and used* for the handling of ordinary freight.

Ans. I do not think there is any difference. I think the one is just as essential for the proper conduct of the business as a freight-house.

Int. 16. Has the Burlington system elevators of this description at other points along its road?

Ans. I am not prepared to answer that. I could not tell you. There is an elevator at Burlington, but I don't think the company owns it. I think it is a private enterprise, though I am
283 not certain.

Int. 17. But they could not handle any grain in Burlington without an elevator?

Ans. No; not to any extent.

Excused.

JOHN M. LANE, of lawful age, being first duly sworn on behalf of the intervenor, deposed and answered as follows:

Direct interrogatories propounded by Mr. SHELDON:

Int. 1. Please state your name, residence, and occupation.

Ans. J. M. Lane; Council Bluffs; agent for the Chicago, Milwaukee & St. Paul.

Int. 2. How long have you been connected with the Chicago, Milwaukee and St. Paul railway?

Ans. Nearly 11 years.

284 Int. 3. Were you connected with any railroad prior to that time?

Ans. No, sir.

Int. 4. Do you know the elevator in Council Bluffs known as the Union elevator?

Ans. I know there is such an elevator.

Int. 5. Do you know whether the Chicago, Milwaukee and St. Paul is one of the owners?

Ans. I do not.

Int. 6. Are you familiar with the methods adopted by the Chicago, Milwaukee and St. Paul and other railroads in the Western States for the handling of grain?

Ans. I cannot say that I am familiar with it. I know something about it.

Int. 7. Are you connected with the freight department of the Milwaukee road?

Ans. Yes, sir.

285 Int. 8. You know the methods adopted by that road for the handling of grain, do you not?

Ans. Yes.

Int. 9. Do they differ in any material respects from those adopted by other roads running into Council Bluffs?

Ans. No; all the lines here handle their grain in about the same way.

Int. 10. What is the object of a grain elevators used in connection with a railroad?

Ans. It is to transfer grain from foreign cars through the elevator and for cleaning grain.

Int. 11. And storage of the same mainly?

Ans. Yes.

Int. 12. Considering grain one of the freights of a railroad, in what respect does a grain elevator differ from an ordinary
286 freight depot, both being used for the handling of articles to be transported over the road?

Ans. Well, I don't think it would be considered that there is any difference. It is as essential as a freight warehouse.

Int. 13. Please state briefly the necessity, in your opinion, for the existence of such grain elevators in the handling of grain to be transported over the roads running out of Council Bluffs.

Ans. Well, I think it is very essential—very necessary. Large quantities of grain could not be handled in any other way, except through an elevator, without a good of deal of expense.

Int. 14. Are such elevators commonly found at terminal and other points on railroads where grain is handled?

Ans. I do not know; I know they have large elevators, but whether they are union elevators——

287 Int. 15. I mean leaving apart the question as to whether they are actually owned by the roads themselves—speaking merely of the necessity for such elevators that the business of the road may be handled.

Ans. In a place like this they could not handle grain without an elevator.

Int. 16. Are not such elevators commonly found at all points where the grain is shifted in bulk—that is, transferred from car to car?

Ans. Yes; I think they are.

Int. 17. Does the St. Paul road make use of this elevator in the handling of its elevator business?

Ans. Yes; from this point.

Int. 18. Could it handle its grain business without an elevator of some kind?

Ans. I don't think it could.

288 Int. 19. What would you say in that respect of the Wabash Co.?

Ans. I think they are in the same position we are in that respect.

Int. 20. Please state whether, in your opinion, the erection of this Union elevator at Council Bluffs was a necessary expenditure on the part of the roads owning it.

Ans. I think it was.

Int. 21. In the absence of such an elevator in Council Bluffs could any grain be handled or received by the Wabash Company without large additional expense?

Ans. No; it could not.

Excused.

289 GEORGE F. WRIGHT, of lawful age, being first duly sworn on behalf of the intervenor, deposed and answered as follows:

Direct interrogatories propounded by Mr. SHELDON:

Int. 1. Please state your name, residence, and occupation.

Ans. Geo. F. Wright; Council Bluffs, Iowa; attorney-at-law.

Int. 2. How long have you lived in the city of Council Bluffs?

Ans. Since 1868.

Int. 3. Do you know the elevator situated in Council Bluffs known as the Union elevator?

Ans. Yes.

Int. 4. Is there any other elevator in Council Bluffs than that?

Ans. Not of any size.

Int. 5. By whom is that owned?

290 Ans. It is owned by the Union Elevator Company of Council Bluffs.

Int. 6. Is that a corporation?

Ans. Yes; it is.

Int. 7. Under the laws of the State of Iowa?

Ans. Under the laws of Iowa.

Int. 8. Are you connected in any way with that corporation?

Ans. Yes; I am.

Int. 9. In what capacity?

Ans. I am a member of the board of directors, and am also the secretary and treasurer of the company.

Int. 10. What is the capital stock of that corporation?

Ans. The capital stock is fixed at $500,000.

Int. 11. Can you state the names of the present stockholders?

Ans. The stockholders are the Union Pacific Railway Co.,
291 the Chicago and Northwestern Railway Company, the Chicago, Milwaukee and St. Paul Railway Company, the Wabash, St. Louis and Pacific Railway Company, the Chicago, Rock Island and Pacific Railway Company, and the Chicago, Burlington and Quincy Railroad Company.

Int. 12. What are the various amounts of stock held by those companies?

Ans. Each company is supposed to own one-sixth of the stock of the company.

Int. 13. They each hold an equal amount of stock, then, if I understand?

Ans. The agreement or stock subscription contemplated that each should own an equal share of the stock or amount necessary to build the elevator belonging to the company.

292 Int. 14. In what year was this stock subscribed for?

Ans. In 1881.

Int. 15. In what year was the elevator built?

Ans. In 1881 and 1882.

Int. 16. What was the cost?

Ans. The approximate cost has been about $280,000. It might overrun that somewhat.

Int. 17. That was the total amount, then, if I understand you, by the stockholders approximately?

Ans. Well, that was about the total cost of the constructed elevator, and all of that amount has not been paid in; at least one of the stockholders has failed to pay up its quota in full.

Int. 18. On this entire issue of $500,000 of stock there has
293 been paid in by the various stockholders except one the sum of $280,000. Is that the way of it?

Ans. Yes.

Int. 19. And there has never been any further call on the stock?

Ans. No, sir.

Int. 20. That, I understand, was in pursuance of an agreement that the subscription should not exceed the cost of the elevator?

Ans. Yes.

Int. 21. That is, $500,000 or so much thereof as was required to build it?

Ans. That is it exactly.

Int. 22. Was this stock subscribed for by these stockholders by agreement in writing?

A. Yes; I believe it was.

294 Int. 23. Was there at that time any agreement concerning this ordinary stock subscription?

Ans. Well, nothing further than it seemed to be the understanding of the board of directory that no stock should be issued until the elevator was completed, and that then no stock should be issued until each stockholder had paid up its respective share, and the officers authorized to issue stock were so instructed in relation to the issuance of stock.

Int. 24. Who composed the board of *of* directors of the elevator at this time?

Ans. The present board of directors consists of Marvin Hughitt, of the C. & N. W. Railway Co.; T. J. Potter, of the C., B. & Q.; R. R. Cable, of the C., R. I. and P.; J. F. Tucker, of the Chicago, Milwaukee and St. Paul; A. A. Talmage, of the Wabash, St. Louis and Pacific; S. R. Calloway, of the Union Pacific; Thomas L.
295 Kimball, of the Union Pacific, and myself.

Int. 25. Are you connected, Mr. Wright, in any way with any one of these stockholders?

Ans. How do you mean?

Int. 26. Are you a director in any one of these six companies?

Ans. No, sir; I am not connected in any way with any of them.

Int. 27. Then with the exception of yourself, if I understand you rightly, the board of directors of the elevator company is composed of either the president, vice-president, or general manager of each of these stockholders?

Ans. Or some other officer of them; yes. Each road is supposed to be represented on the board; and the Union Pacific was originally given two directors, and I was appointed outside of all
296 in order that they might have an executive or building committee that could work at all times during the building of

the elevator without bringing these other directors here from a distance, and do business.

Int. 28. Was there any agreement at the time of the formation of this elevator company or is there any now which would limit in any way the free transfer of this stock when once paid for and issued?

Ans. There was an agreement entered into by these several companies, stockholders, at the time of the subscription of the stock; but I should be unable to state how far that went in that particular, if at all, without referring to the agreement itself.

Int. 29. Have you a copy of that agreement?

Ans. I think I have in my office; yes.

297 Int. 30. Is it or is it not your recollection that any stockholder could sell his stock to an indifferent or even a hostile outside party without the consent of the other stockholders?

Ans. I have no recollection on that point; I do not remember anything about it.

Int. 31. How are the expenses of the elevator paid?

Ans. The elevator is now operated by lessees, who have a lease continuing some four years yet before its expiration.

Int. 32. When was that lease entered into?

Ans. It was entered into a year ago last Sept., I think; about September 1st, 1885, is my recollection.

Int. 33. Was it leased between the time of its building and the time of entering into of the lease you have just named?

298 Ans. Yes; there was a different lessee operated it from the time of its completion up to Sept. 1st, 1885.

Int. 34. What were the terms of that first lease?

Ans. It was a verbal lease. The arrangement for the lease was made substantially with Mr. Kimball as one of the executive committee, by which the lessees were to keep the building and machinery insured at an amount not less than $100,000, and that they were also to pay the taxes, municipal, State, and county, and every other assessment of every kind that should be made against the property. They were also to complete and perfect a water connection between the elevator and what is known as Spoon Lake, in order to have a sufficient supply of water to operate the elevator with. They were also to keep the machinery and elevator and elevator property in proper and suitable repair during the term of the

299 lease; and the matter of additional rental was to be determined, if any additional paid, by the amount of business that should be done at the elevator. It was left indefinite on account of the fact that this was a new enterprise; that grain had not been brought into these channels very much before the building of this elevator; and the lessees claimed that it would be impossible to fix any just and fair rental until they could ascertain by actual experiment how much grain they could get to come through the elevator and how much business could be done, and, relying upon the fact that they were putting their money in and operating this elevator under the conditions I have named, the executive committee thought

that was probably as well as it could do under the circumstances; and that kind of a contract was accordingly made.

300 Int. 35. Has the lessee under the present lease held under the same terms?

Ans. No, sir; the rental under the present lease is one dollar per car for every car of grain that goes through this elevator, with the guarantee that the number of cars shall not be less than 5,000 each year, and that rental of $5,000 per annum is paid quarterly, and at the end of the year we have a settlement and adjustment; and if more than 5,000 cars have gone through, then that is paid for at the same rate of one dollar per car; that is all the rental they pay; they have nothing to do with caring for the property, as was stipulated in the other lease.

Int. 36. Under these two leases have the expenses of the elevator been paid without drawing on the stockholders?

301 Ans. The expenses of running?

Int. 37. Yes.

—. Substantially they have.

Int. 38. Has there been any excess?

Ans. No, sir; there never has been.

Int. 39. The stockholders, then, have never received anything in the way of dividends on their stock?

Ans. Nothing at all; no.

Int. 40. They never expected to when they went into the arrangement, did they?

Ans. Well, that is something I know nothing about.

Int. 41. Has there been any shortgages made up by the stockholders since the elevator was built?

Ans. No; I think not, only that in settling with the first
302 lessees the executive committee, I think, in order to close up the settlement and wind up the matter, agreed to pay one-third of the taxes for one year, I think, that the lessee should have paid all, and that money to pay that third was taken from the rentals received from the elevator.

Int. 42. For how much stock did the Wabash, St. Louis and Pacific Railway Company subscribe?

Ans. The understanding was that each company was to subscribe and pay for one-sixth of the cost of the elevator, which, of course, approximated at $280,000. The Wabash, St. Louis and Pacific paid all but $10,000, and I am not positive but it paid all but $5,000. The vouchers in the hands of that company, signed by my-
303 self as secretary and treasurer, would show the amount the company actually paid. The book in which my clerk kept a record of the receipt of these assessment- has been by him lost and I am unable to find it. Hence I am not positive whether the Wabash paid the two last assessments or only one of them. I know it is back one, because that was made since it seemed to have been unable to pay.

Int. 43. Then the subscription to this capital stock made by the Wabash, St. Louis and Pacific Railway Company was in reality one-

sixth of the cost, was it not, and not any fixed amount in dollars and cents?

Ans. Yes; that is the way it was intended to be.

Int. 44. It was not, then, anticipated to have any fund in the treasury of the company in excess of the cost of the building?

304 Ans. No, sir.

Int. 45. You say the cost of the building was $280,000, approximately, one-sixth of which is $46,666.66. As you understand it, then, is that the amount of the subscription as ascertained by the cost as made by the Wabash Company?

Ans. Yes; that would be the amount.

Int. 46. Mr. Howe, the general agent of the Wabash receivers and former secretary of the Wabash, St. Louis and Pacific Railway Company, has testified in this case that the Wabash Company have paid all assessments made upon this stock except $5,000—that is to say, that the company's subscription of one-sixth of the cost has been paid to the amount of $41,666.66. Would you or would you not say from what you have just stated about the loss of your

305 own books that that was correct?

Ans. I should suppose it was; yes.

Int. 47. Then the amount now due upon the stock of the Wabash Company is $5,000?

Ans. It is if that statement is correct about their having paid $41,000 and over.

Int. 48. Do you remember a few months ago of Col. McKissock, the petitioner in this intervening petition, tendering you the sum of $5,000, being, as he then stated, the amount due upon this stock and asking for the issuing to him of the stock certificate?

Ans. Yes; I do.

Int. 49. What is the object of a grain elevator, Mr. Wright?

Ans. Of this elevator?

Int. 50. Yes.

Ans. I understand that the object of this elevator was to

306 have a place for the storage and transfer of grain and to try to divert the grain to this elevator in order that it might be transported to market over the different lines of the respective owners.

Int. 51. Was it or was it not built to increase the business of these various roads?

Ans. My understanding is that it was for that purpose.

Int. 52. Do you know of any other reason the roads had in mind except that?

Ans. No; I do not.

Int. 53. Please state briefly the necessity for such grain elevators at terminal and other points on their roads where large amounts of grain are to be handled.

Ans. I don't know that I am sufficiently versed in this matter of the grain trade to enable me to give any intelligent reasons

307 for the whys and wherefores of it. It is altogether out of my line.

Int. 54. Do you know whether the present grain business done in the city of Council Bluffs could be conducted without an elevator?

Ans. I do not; no, sir.

Int. 55. You do not know what difference financially it would make to the companies that handle the present grain business without an elevator?

Ans. I do not; no.

Int. 56. Could you state roughly the amount of grain per annum the Wabash Company took out of their elevator and shipped over their road?

Ans. I could not. I have no knowledge whatever in regard to that.

Int. 57. I suppose the account is kept by the lessee?

308 Ans. Yes; entirely so.

Int. 58. Is this elevator used by any other persons or corporations than these six stockholders?

Ans. Not to my knowledge.

Int. 59. Could you state whether or not the effect upon the business of these six companies of this elevator was favorable or unfavorable?

Ans. I could not; no.

Int. 60. What is your impression about that?

Ans. I have no opinion in regard to it all. I have no knowledge or data by which I could form an opinion. I know nothing about that branch of the business.

Int. 61. Could you state what the object was these six companies had in mind in building one common elevator rather than

309 building six different ones, one for each road?

Ans. I could not answer.

Int. 62. You are familiar, are you not, with the expenses attendant upon the running of that elevator?

Ans. No, sir; I am not. I haven't any knowledge on that.

Int. 63. Do you not know approximately what it costs that lessee to run it per year?

Ans. No; I know no more than a child about that.

Int. 64. Who owns the land on which the building stands?

Ans. The Union Pacific Railway Company.

Int. 65. What interest in it has the elevator company?

Ans. It has a lease, I think, for 99 years at a nominal rental.

310 Int. 66. They practically pay nothing, then, for the use of the land?

Ans. Yes.

Int. 67. About how much land is there so occupied by the elevator company? Do you know?

Ans. My impression is there is about five acres.

Int. 68. The building stands on some part of that?

Ans. Yes.

Int. 69. What facilities have the elevator company afforded the other roads for the use of the elevator by way of trackage or otherwise?

Ans. Tracks and switches, such as are deemed necessary for the use of the elevator, have been located and are maintained there.

Int. 70. By the elevator company?

Ans. Yes.

Int. 71. Are they or are they not so arranged that each one
311 of these six stockholders have ready access to this elevator?

Ans. They are so arranged; yes.

Int. 72. Is that in pursuance of the terms of the original subscription to this stock?

Ans. I think it is; yes. I think that is an express stipulation in the agreement that they are all to be equally interested and served there without discrimination.

Int. 73. Are all the other subscriptions to this stock paid up?

Ans. Yes; all paid except the Wabash.

Int. 74. That is, each one of these other five roads have paid in cash the sum of $46,666.66?

Ans. Yes.

Int. 75. And has a proper certificate of stock been issued to each one of them?

Ans. Yes.

312 Int. 76. Do you remember whether those certificates are each for a fixed sum of money or general in their terms?

Ans. They run for so many shares of stock at $100 each, which would amount to that sum or nearly so.

Int. 77. It is not for one-sixth of the stock subscribed for?

Ans. No; I think not. The number of shares at $100 a share that would approximate nearest to that amount, they having paid really one-sixth of that amount.

Excused.

UNITED STATES OF AMERICA, }
Southern District of Iowa, } *ss:*

I, F. M. Hunter, commissioner heretofore appointed by the court, do hereby certify that on the 12th day of January, A. D. 1887,
313 before me, at my office, in the city of Council Bluffs, in said district, personally appeared Charles Kieth, J. M. Lane, and George F. Wright, by consent of counsel hereinafter named, at the hour of 10 o'clock a. m. of said day, and Theodore Sheldon, Esq., of Chicago, Illinois, appeared as counsel for the intervenor, and Col. W. H. Blodgett and H. S. Priest, Esq., solicitors for respondent, appeared not for the respondents or any of them, and the said witnesses above named, being by me first duly sworn to testify to the whole truth and being carefully examined, deposed and said as appears by the depositions hereto annexed; and I further certify that said depositions were then and there taken, by agreement of counsel heretofore made, by C. H. Sholes in short-hand and by him transcribed into long-hand; and I further certify that the formal signing of said depositions by the respective witnesses
314 and the reading thereof was, by agreement of counsel, herein waived; and I further certify that — the said C. H. Sholes nor

myself are of counsel or attorney for either party or otherwise interested in the event of the suit.

In testimony whereof I have hereunto set my hand, at my office, in said city of Council Bluffs, this — day of January, 1887.

F. M. HUNTER,
Commissioner.

Filed Jan. 18th, 1887.

F. M. HUNTER,
Commissioner.

315 Circuit Court of the United States, Southern District of Iowa, Western Division thereof.

UNITED STATES TRUST COMPANY OF NEW YORK *against* WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY and Others. } In Equity.

In the matter of the petition of Thomas McKissock for the recovery of interest in elevator at Council Bluffs, Iowa.

It is stipulated herein as follows:

1. That there is hereunto annexed and markes "Exhibit A," attested by J. F. How, a true copy of the agreement entered into between all the stockholders of the Union Elevator Company
316 preliminary to the incorporation of the said company.

1½. That pursuant to said agreement a corporation was organized under and pursuant to the statutes of the State of Iowa, and the Wabash, St. Louis and Pacific railway subscribed to shares of the stock thereof, and otherwise than as such stockholder has no interest in the property of the said Union Elevator Company.

A true copy of the articles of incorporation of said company is herewith filed, marked "Exhibit A."

2. That there is hereunto annexed and marked "Exhibit B" a true copy of the decree of sale, entered of record January 6th, 1886, by the circuit court of the United States for the eastern district of Missouri in the case of The Central Trust Company of New York
317 *et al.* against The Wabash, St. Louis and Pacific Railway Company *et al.*

3. That the interest in the elevator at Council Bluffs, Iowa, mentioned and described in said decree on page fifteen and therein declared to be subject to the lien of the "general mortgage" and ordered to be sold is the same property claimed by the petition herein.

4. That the deed of trust mentioned and described in said decree on pages thirty-four and thirty-five, dated February 15th, A. D. 1879, is the same deed of trust sought to be foreclosed in this action.

THEODORE SHELDON,
Solicitor for Intervenor.
H. S. PRIEST,
Solic-tor for Receivers Humphreys — Tutt.

318 EXHIBIT A.

Memorandum of contract between the Union Elevator Company, a corporation duly incorporated under the laws of the State of Iowa, party of the first part, and the Union Pacific Railway Company, a Federal corporation, party of the second part; the Wabash, St. Louis and Pacific Railway Company, party of the third part; the Chicago, Rock Island and Pacific Railway Company, party of the fourth part; the Chicago, Burlington and Quincy Railway Company, party of the fifth part, and the Chicago and Northwestern Railway Company, party of the sixth part, and Chicago, Milwaukee and St. Paul Railway Company, of the seventh part, witnesseth:

That whereas the parties of the second, third, fourth, fifth,
319 sixth, and seventh parts have severally agreed to contribute equally to the capital stock of the party of the first part, and have each subscribed $100,000 thereto, to be paid equally in installments as called for:

Now, as part of the consideration and inducement to such subscriptions, it is agreed by the party of the first part, severally, to and with each of the parties of the second, third, fourth, fifth, sixth, and seventh parts that the said party of the first part will not in the conduct of its business at any time discriminate in favor of or against either of the said parties of the second, third, fourth, fifth, sixth, and seventh parts in any respect whatsoever; and the party of the first part further agrees severally with each of the said other parties hereto that it will at all times do elevator service for each of said companies on equal terms and conditions, affording to the
320 full extent of its capacity to each and all equal advantages and facilities.

In witness whereof the said several parties have caused these presents to be executed by their officers and attested by their respective corporate seals.

(Signed by all the parties.)

321 UNITED STATES OF AMERICA, }
State of Iowa. }

EXHIBIT A 1.

I, Frank D. Jackson, secretary of state of the State of Iowa, do hereby certify that the attached instrument of writing is a true and correct copy of articles of incorporation of the "Union Elevator Company," also amendment thereto, as the same appears of record in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of the secretary of state of the State of Iowa. Done at Des Moines, the capital of the State, this tenth day of March, in the year of our Lord one thousand eight hundred and eighty-seven, of the Independence of the United States the one hundred and eleventh, and of the State of Iowa the forty-first.

FRANK D. JACKSON,
[SEAL.] *Secretary of State of the State of Iowa.*
C. S. BYRKIT, *Deputy.*

322 *Articles of Incorporation of the Union Elevator Company.*

Be it known that we, the undersigned, do hereby certify that under the authority of the statutes of the State of Iowa concerning the creation and formation of corporations for pecuniary profit we do by these presents hereby constitute ourselves and such other persons as may hereafter become members of the corporation hereby formed into a body politic and corporate, and under and in pursuance of said statutes of the State of Iowa we do hereby adopt the following articles of incorporation, and do hereby assume to and for the said corporation all of the rights, powers, and privileges granted and conferred by the laws of Iowa upon corporations of the kind hereby formed and created, and to this end make and
323 adopt these articles of incorporation:

Article 1.

The name of this corporation shall be "the Union Elevator Company."

Article 2.

This company is to commence its existence on the second day of January, A. D. 1881, and is to terminate on the 1st day of January, A. D. 1900.

Article 3.

The principal place of transacting the business of this corporation shall be at the city of Council Bluffs, in the county of Pottawattamie and State of Iowa.

Article 4.

The capital stock of said company shall be five hundred thousand dollars, divided into five thousand shares of one hun-
324 dred dollars each, with power to increase the same, according to law, to one million of dollars.

The amount of capital with which said company will commence business is two hundred and fifty thousand dollars, of which ten per cent. is payable at once in cash. The subscriptions to the capital stock are to be paid in when called for by the board of directors.

Article 5.

The object for which the said corporation is formed and the general nature of the business to be transacted by it are as follows: The erection within or near the city of Council Bluffs of one or more grain elevators for the receipt, storage, and discharge of wheat, corn, and other grain for hire and compensation, with power to purchase or lease the necessary real estate, and all the powers incidental,
325 usual, and necessary to the transaction of business of the general nature above described, both for the public and for railway companies terminating at or near Council Bluffs.

Article 6.

Said corporation shall have power to make all needful by-laws to carry out the objects of these articles, and to comply with all the requirements of the laws of Iowa applicable to such corporations.

Article 7.

Stockholders are not individually liable for the debts of the corporation beyond their legal liability in respect of stocks owned or held by them. The private property of stockholders is exempt from corporate debts. The highest amount of indebtedness or liability to which this corporation is at any time to subject itself
326 is five hundred thousand dollars ($500,000).

Article 8.

The officers of this corporation, until otherwise provided, shall consist of a president, vice-president, secretary, and treasurer, and its affairs shall be managed by a board of seven directors. The number of directors may be enlarged by by-laws to eleven. The office of treasurer and secretary may, if the directors so order, be filled by one and the same person. The directors shall be elected by the stockholders at the annual meeting of the stockholders. The president and other officers shall be appointed annually, on the first Wednesday of June, by the directors, and shall hold until their successors are appointed and qualified.

327 Article 9.

Until changed by by-laws, the regular annual meeting of the stockholders for the election of directors and other purposes shall be held at the office of the company, in the city of Council Bluffs, on the first Wednesday of June in each year, at two o'clock p. m. All meetings for the transaction of financial business or other business not required by law to be held in Iowa may be held in the city of New York or in such other place or places as the company's business may require.

In witness whereof the undersigned have hereunto set their hands and seals this seventeenth day of December, A. D. 1880.

SIDNEY DILLON. [SEAL.]
A. L. HOPKINS. [SEAL.]
ALBERT KEEP. [SEAL.]
HUGH RIDDLE. [SEAL.]
CHARLES E. PERKINS. [SEAL.]

328 STATE OF NEW YORK, } ss:
City & County of New York, }

On this second day of February, A. D. 1881, before me, Francis Culbert, a notary public, personally appeared Sidney Dillon, who I am satisfied and know to be the person who signed the above and foregoing instrument, and, I having first made known to him the

contents thereof, he acknowledged that he signed, sealed, and delivered the same as his voluntary act and deed for all the uses and purposes therein expressed.

Witness my hand and official seal, hereto set the date above written.

[SEAL.] FRANCIS R. CULBERT,
Notary Public, N. Y. Co.

329 STATE OF NEW YORK, } ss:
County of New York, }

On this second day of February, A. D. 1881, before me, Francis R. Culbert, a notary public, personally appeared A. L. Hopkins, whom I know to be the person who signed the above and foregoing instrument, and, I having first made known to him the contents thereof, he acknowledged that he signed, sealed, and delivered the same as his voluntary act and deed for all the uses and purposes therein expressed.

Witness my hand and *affixed* seal, hereto set the date above written.

FRANCIS R. CULBERT,
Notary Public, N. Y. Co.

330 THE STATE OF NEW YORK, } ss:
City & County of New York, }

On this fourth day of February, A. D. 1881, before me, Edwin F. Corey, a notary public, personally appeared Albert Keep, whom I know to be the person who signed the above and foregoing instrument, and, I having first made known to him the contents thereof, he acknowledged that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

Witness my hand and *affixed* seal, hereto set the date above written.

EDWIN F. COREY,
[SEAL.] *Notary Public.*

331 THE STATE OF ILLINOIS, } ss:
County of Cook, }

On this twentieth day of December, A. D. 1880, before me, James C. Hutchins, personally appeared Hugh Riddle, whom I know to be the person who signed the above and foregoing instrument, and, I having first made known to him the contents thereof, he acknowledged that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

Witness my hand and *affixed* seal, hereto set the date above written.

JAMES C. HUTCHINS,
[SEAL.] *Notary Public.*

332 THE STATE OF ILLINOIS, } ss:
County of Cook, }

On this seventeenth day of December, A.D. 1880, before me, Lester O. Goddard, personally appeared C.E. Perkins, whom I know to be the person who signed the above and foregoing instrument, and, I having first made known to him the contents thereof, he acknowledged that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

Witness my hand and *affixed* seal, hereto set the date above written.

LESTER O. GODDARD,
[SEAL.] *Notary Public.*

333 I, James P. Goulden, recorder of Pottawattamie county, State of Iowa, do hereby certify that the foregoing articles of incorporation were filed in my office this 14th March, 1881, at 3 o'clock p. m., and are recorded in Book 104, page 45, Pottawattamie Co., Iowa, records.

JAMES P. GOULDEN, *Recorder.*

Filed March 14, 1881, at 3 o'clock p. m., in Book 104, page 45.
JAMES P. GOULDEN, *Recorder,*
Per JAMES M. LESTER, JR., *Deputy.*

STATE OF IOWA, *ss:*

Filed for record in office of secretary of state March 16, 1881.
J. A. T. HULL,
Secretary of State.
W. F. HAMMOND, *Deputy.*

334 Whereas Sidney Dillon, A. L. Hopkins, Albert Keep, Hugh Riddle, and Charles E. Perkins heretofore, to wit, on the 17th day of December, A. D. 1880, adopted, under the authority of the laws of the State of Iowa, articles of incorporation of "The Union Elevator Company," which they signed and acknowledged as required by the laws of said State, and caused the same to be recorded on or about the 14th day of March, 1881, in the office of the recorder of deeds of Pottawattamie county, Iowa, and on or about the 16th day of March, 1881, caused the same to be recorded in the office of the secretary of state of the State of Iowa; and whereas the said articles of incorporation fixed the capital stock of said company at five hundred thousand dollars, with power to increase the same according to law to one million of dollars; and whereas the said arti-
335 cles also provide that the highest amount of indebtedness or liability to which said corporation is at any one time to subject itself is five hundred thousand dollars; and whereas the laws of Iowa provide that the liability to which such a corporation shall at one time be subject must in no case exceed two-thirds of the capital stock; and whereas said corporation has not as yet commenced business, and it is desirable to avoid all questions touch-

ing the amount of debt to which the corporation shall at one time be subject: Now, therefore, the undersigned corporators, under and by authority of the statute of the State of Iowa concerning the creation and formation of corporations for pecuniary profit, do hereby amend the 7th article of the aforesaid articles of incorporation as follows, to wit: The highest amount of indebtedness or liability to which the Union Elevator Company aforesaid is at one time
336 to be subject is three hundred thousand dollars instead of five hundred thousand dollars, as in the said original article is provided.

In witness whereof the undersigned have hereunto set their hands and seals this 28th day of March, 1881.

SIDNEY DILLON. [SEAL.]
A. L. HOPKINS. [SEAL.]
HUGH RIDDLE. [SEAL.]
ALBERT KEEP. [SEAL.]
CHARLES E. PERKINS. [SEAL.]

STATE OF NEW YORK, }
City and County of New York, } *ss:*

On this 28th day of March, A. D. 1881, before me, Francis R. Culbert, a notary public, personally appeared Sidney Dillon and A. L. Hopkins, who I am satisfied and know to be the persons who signed the above and foregoing instrument, and, I having first
337 made known to them the contents thereof, they did severally acknowledge that they signed, sealed, and delivered the same as their voluntary act and deed for all the uses and purposes therein expressed.

Witness my hand and official seal, hereto set the date above written.

FRANCIS R. CULBERT,
[SEAL.] *Notary Public, N. Y. Co.*, 41.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

On this second day of April, A. D. 1881, before me, John T. Human, a notary public, personally appeared Hugh Riddle and Albert Keep, whom I know to be the persons who signed the above and foregoing instrument, and, I having first made known to them
338 the contents thereof, they severally acknowledged that they signed, sealed, and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

Witness my hand and official seal, hereto set the date above written.

JOHN T. HUMAN,
[SEAL.] *Notary Public.*

STATE OF ILLINOIS, }
Cook County, } *ss:*

On this 13th day of April, A. D. 1881, before me, Lester O. God-

dard, a notary public in and for said county, in the State aforesaid, personally appeared Charles C. Perkins, whom I know to be the person who signed the above and foregoing instrument, and he, having first read the contents thereof, acknowledged that
339 *that* he signed, sealed, and delivered the same as his free and voluntary act and deed for the uses and purposes therein expressed.

Witness my hand and official seal, hereto set the day and year above written.

LESTER O. GODDARD,
[SEAL.] *Notary Public.*

Filed for record on this 2nd day of May, 1881, at 10 o'clock a. m., and recorded in Book 104, page 60.

J. P. GOULDEN, *Recorder.*

STATE OF IOWA, *ss:*

Filed for record at office of secretary of state May 12, A. D. 1881.

J. A. T. HULL,
Secretary of State.

340 EXHIBIT "B."

In the Circuit Court of the United States for the Eastern District of Missouri. September Term, A. D. 1885. In Equity.

THE CENTRAL TRUST COMPANY OF NEW YORK and Others
against
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others.
} Consolidated Cause.

Now, on this day, came the following parties, by their solicitors, namely, The Central Trust Company of New York, James Cheney, The Wabash, St. Louis and Pacific Railway Company, The
341 Mercantile Trust Company of New York, The St. Louis, Iron Mountain and Southern Railway Company, Solon Humphreys, John T. Terry, and all the other defendants who have answered the bill of the Central Trust Company of New York and James Cheney or the bill filed by the said complainants in the State court and removed to this court, or the cross-bill filed by the Mercantile Trust Company of New York, viz:

1. Anthony J. Thomas, as trustee of the Cairo Div.
2. Charles Edward Tracy.
3. United States Trust Company of New York.
4. Quincy, Missouri and Pacific Railroad Co.
5. Charles H. Bull.
6. Amos Green.
7. Henry F. Spaulding.
8. St. Joseph & St. Louis Railroad Co.

9. St. Louis Bridge Co.
342 10. The Tunnel Railroad of St. Louis.
11. St. Louis, Council Bluffs and Omaha Railroad Co.
12. James B. Eads.
13. Joseph A. Jamison.
14. Charles Parsons.
15. Isaac H. Knox.
16. Geo. E. Leighton.
17. Louis H. Meyer.
18. Michigan City and Indianapolis Railroad Co.
19. William Nichols.
20. Geo. S. Coe.
21. Indianapolis, Perus and Chicago Railway Co.
22. German Savings Institution.
23. Boone County and Booneville Railway Co.
24. Brunswick and Chillicothe Railway Co.
25. George M. Rice.
26. Edward P. Burnham.
27. John Kimball.
28. Chicago, Cincinnati and Louisville Railroad Co.
29. Clarinda and St. Louis Railroad Co.
343 30. Geo. I. Seney.
31. Geo. T. M. Davis.
32. Des Moines Northwestern Railway Co.
33. Farmers' Loan and Trust Co.
34. Henry W. Ford.
35. Richard S. Brock.
36. J. P. Giraud Foster.
37. Edward K. Goodnow.
38. John M. Woodson.
39. Robert A. Betts.
40. Alexander M. White.
41. Henry H. Worden.
42. James R. Jesup.
43. John N. A. Griswold.

And it appearing to the court that all the defendants to the bills of complaint aforesaid have entered their appearance herein, or have been duly served with process herein, or have been notified of the pendency of this cause by personal service or by publication, as heretofore ordered by the court, such service of process or notice
344 being given and such publication having been made more than twenty days before the first Monday of October, A. D. 1885:

It also appeared to the court that the following trustees have either resigned their trusts or departed this life, namely:

1. Edwin D. Morgan.
2. H. F. Vail.
3. O. H. Browning.
4. Abram W. Hendricks.
5. Lucien Tilton.

The court finds that the trusts represented by the parties above

named as having resigned their trusts or departed this life are fully represented in this cause, or that such trusts will not be affected by this decree.

The court also finds that of the parties defendant served with process or notified as aforesaid a large number have been
345 defaulted more than a month before the rendition of this decree, and the original and removed bills of the Central Trust Company and James Cheney taken for confessed against them and each of them, viz:

1. John R. Lionberger.
2. Attica, Covington and Southern R. R. Co.
3. Champaign and Southeastern R'y Co.
4. Havana, Rantoul and Eastern R. R. Co.
5. Des Moines and St. Louis R. R. Co.
6. Council Bluffs and St. Louis R'y Co.
7. Humeston and Shenandoah R. R. Co.
8. St. Louis, Ottumwa and Cedar Rapids R. R. Co.
9. Alfred T. White.
10. Daniel A. Lindley.
11. Wager Swayne.
12. Clifford A. Hand.

346 13. Robert C. Martin.
14. George J. Gould.

15. John Paton.
16. David J. Tyson.
17. Charles E. Whitehead.
18. William Hill.
19. Theodore Gilman.
20. Edward De Rose.
21. Henry A. Mott.
22. Charles Jackson.
23. G. M. Whitlemore.
24. James H. Britton.
25. Townsend Underhill.
26. William H. Ladd.
27. J. C. Rogers.
28. Benjamin Ham.
29. Archibald Hopkins.
30. James Compton.
31. Abram W. Hendricks.
32. Thomas B. Coulter.
33. Thomas Mayo.
34. Phillip Henry Brown.
35. Metropolitan National Bank.
36. Eel River R. R. Co.
37. Toledo, Peoria & Western R. R. Co.
38. St. Louis, Jerseyville and Springfield R. R. Co.

347 39. Peoria and Pekin Union R. R. Co.
40. Chicago and Western Indiana R. R. Co.

41. Chicago, St. Louis & Pittsburgh R. R. Co.
42. Hannibal Bridge Co.

43. Missouri, Iowa & Nebraska R. R. Co.

The court finds and adjudges that because the bills so filed by the Central Trust Company and James Cheney and the cross-bill filed by the Mercantile Trust Company of New York cover and embrace all the rights and equities upon which the property hereinafter described can or ought to be sold by decree or decrees of this court in this cause it will not be necessary to found this decree on the original or amended bills of the Wabash, St. Louis and Pacific Railway Company or the prayers thereof, but said last-named bills
348 will be retained by the court for the purpose of adjusting all such rights as have arisen under the same, but not for the purpose of foreclosing under the prayers thereof any of the instruments hereinafter described.

And now, this cause coming on for final hearing on the original removed bill and cross-bills of the Central Trust Company of New York (to be called hereafter the Central Trust Company for the sake of brevity) and James Cheney, the cross-bill of the Mercantile Trust Company, the answer of the Wabash, St. Louis and Pacific Railway Company (to be called hereinafter the Wabash Company for the sake of brevity), and all other answers to the above bills of parties appearing of record, with all replications, exhibits, reports of masters or commissioners to whom any of the questions or issues herein presented were referred, and also all evidence taken in said cause relating to
349 said questions and issues, and all replications of the parties or any of them, and also upon the default of all parties who have suffered default as aforesaid, and the court having heard the arguments of counsel and being fully advised in the premises finds and adjudges: On the first day of June, A. D. 1880, the Wabash Company was a body corporate, formed by the consolidation of certain other corporations organized under the laws of the State of Ohio, Indiana, Illinois, and Missouri, and that said company then owned certain lines of railroad formerly owned by other bodies or parties, with all the property, real and personal, and all the franchises thereof; that said Wabash Company was then acquiring or in contemplation of acquiring still other lines of railroad, with the property and franchises thereof, by lease, consolidation, or otherwise, all of which lines so owned or held or so about to be acquired
350 will be more fully described hereinafter.

On the first day of June, A. D. 1880, the said Wabash Company, for the purpose of securing an intended issue of its mortgage bonds to the amount of fifty millions of dollars (to be known as "general mortgage bonds") and the payment of the principal and interest thereof, duly executed and delivered to the Central Trust Company of New York and James Cheney, of Indiana, as trustees, its mortgage or deed of trust (known as "the general mortgage") and thereby conveyed to said trustees, for the purposes in said general mortgage fully set forth, certain lines of railroad, and certain interests as the same then existed or might thereafter exist in and to certain other lines of railroad, with all the property and franchises, rights, income, and choses in action pertaining thereto. The

lines of railroad and property and interest specifically described
351 and defined in said mortgage (such description being hereby adopted) and the extent of the lien thereby created as against certain other liens are set forth in said mortgage as follows, such enumeration, however, not embracing other lines of railroad afterwards acquired by the Wabash Company, and to which the lien of said general mortgage afterwards attached:

All of the right of way and railroad of the said first party, extending from the city of Toledo, in the State of Ohio, through the State of Indiana, and thence into the State of Illinois to Meredosia, with branch of said road to Naples and East Hannibal, and from Meredosia to Camp Point, in the State of Illinois, and with branch of said road from Clayton to the east bank of the Mississippi river at Hamilton, in said State, and with branch of said road leading from Decatur, in said State, to East St. Louis, in the same State;
352 and also the railway of the party of the first part, extending from St. Louis, in the State of Missouri, in a northwesterly direction, to Kansas City, Missouri, with a lateral extension from Moberly, in the county of Randolph, to Ottumwa, in the State of Iowa, and a branch from Salisbury, in the county of Chariton, State of Missouri, to Glasgow, in the county of Howard, in said State; and also an extension from Brunswick, in said county of Chariton, in a northwesterly direction to the city of Council Bluffs, in the State of Iowa, which lines of railroad will when united form one continuous line of railway in the same general direction from the waters of Lake Erie at Toledo, Ohio, to the cities of Council Bluffs and Kansas City, on the Missouri river as aforesaid, together with all the embankments, bridges, turnouts, side tracks, buildings and structures, water-tanks and fixtures, shops, engine and other houses,
353 depots, turn-tables, engines, cars, machinery, tools, ferry and other boats, and every other thing appurtenant to said railroad or used in connection therewith belonging to the said first party, together with all rents, issues and profits, credits, and choses in action accruing to said first party from said railroad and appurtenances as owner and holder thereof.

And the said Wabash, St. Louis and Pacific Railway Company, in consideration of the premises above recited and for the further security of the bonds above described, does hereby grant, bargain, sell, assign, transfer, and convey unto the Central Trust Company of New York and James Cheney, trustees, their heirs and successors in said trust, all the right, title, and interest of said first party, as the same now exists or may hereafter exist by virtue of any contract, lease, purchase, or consolidation, in and to the follow-
354 ing-described railroads now in process of amalgamation with the railroad of the said first party, including with said railroads every appurtenance thereto or thing used in connection therewith, and all rents, issues, and profits arising therefrom to the said first party, all the above as fully as above described with reference to the railroad now owned and held by said first party and as fully as it is or may be possible for said first party to convey the same:

The Boone County and Booneville railway, extending from Centralia to Columbia, in the State of Missouri.

The St. Louis, Ottumwa, and Cedar Rapids railway, extending from Moberly, in the State of Missouri, to Ottumwa, in the State of Iowa.

The St. Joseph and St. Louis railway, extending from New
355 Lexington and Richmond and Lexington Junction to St. Joseph, in the State of Missouri.

The Brunswick and Chillicothe railway, extending from Brunswick, to Chillicothe, in the State of Missouri.

The St. Louis, Council Bluffs and Omaha railway, extending from Chillicothe to Elm Flats, in the State of Missouri.

The Chicago and Paducah railway, extending from Effingham and Altamont to Streator, in the State of Illinois.

The Chicago and Strawn railway, extending from Strawn to Chicago, in the State of Illinois.

The Eel River railway, extending from Logansport to Butler, in the State of Indiana.

The Quincy, Missouri and Pacific railway, extending from West Quincy, in the State of Missouri, to the Missouri river opposite Brownsville, Nebraska.

The Missouri, Iowa and Nebraska railway, extending from
356 Keokuk, Iowa, to a junction with the Omaha Division of the Wabash, St. Louis and Pacific railway, near the line between the State of Iowa and the State of Missouri.

The Champaign, Havana and Western railway, extending from Champaign to Havana, in the State of Illinois, and from White Heath to Decatur, in the State of Illinois.

The Toledo, Peoria and Western railway, extending from Warsaw, in the State of Illinois, to the State line of Indiana, and from La Harpe, in the State of Illinois, to Burlington, in the State of Iowa.

The Detroit, Butler and St. Louis railway, from Butler, in the State of Indiana, to Detroit, in the State of Michigan; to have and to hold the said property, real and personal, including the said railroads, appurtenances, equipment, franchises, rights, credit, and
357 choses in action, and every interest herein granted *that* the said trustees, as joint tenants and not as tenants in common, and the survivor of them, his heirs and successors, but in trust, nevertheless, for the use and purposes herein declared and for the purpose of protecting and securing the holders of said fifty thousand bonds and each and every of them, and upon the conditions following—that is to say:

The estate hereby conveyed and the lien of the trust hereby created shall be expressly subject and inferior to all such prior liens above referred to as are charged upon the several portions of the railroad and equipment of the railroad now of said first party and to the estate and lien of such specific trusts and mortgages or other obligations as may be hereafter made and charged by the said first party upon specific property which said first party hereafter
358 may acquire, and shall form part of the purchase-money or condition of the acquisition of the property so charged by said first party.

The court further finds and adjudges that in addition to the lines of railroad specifically described in said general mortgages the lien thereof also attached to all the right and title of the Wabash Company in and to all the following railroads, property, franchises, rights, and interests, whether acquired before or after the execution of the said general mortgage, and whether acquired by purchase, lease, or consolidation or contract, viz:

The Clarinda and St. Louis railway, being 10.1 miles long in the State of Missouri and 11.7 miles in the State of Iowa, making a railroad 21½ miles in length, extending from Clarinda, Iowa, to Roseberry, Missouri. Said Wabash Company acquired title in fee to the Missouri portion of said railroad and a leasehold title to the
359 remainder. The Peoria, Pekin and Jacksonville railroad, extending from Pekin, Illinois, to Jacksonville, Illinois, a distance of 72.2 miles, said railroad having been acquired by purchase July 25, 1881.

The Springfield and Northwestern railroad, extending from Springfield, Illinois, to Havana, Illinois, a distance of 44.1 miles, said railroad being acquired by purchase July 30, 1881.

The Centreville, Moravia and Albia railroad, extending from Centreville, Iowa, to Albia, Iowa, a distance of about 25 miles. Said railroad was leased to the Missouri, Iowa and Nebraska Railroad Company and came to the Wabash Company with the property of said last-named company.

The Des Moines and St. Louis railroad, extending from Des Moines, in the State of Iowa, to Albia, in said State, through the counties of Polk, Marion, and Monroe, in said State, a distance of 67.3 miles, leased to the Wabash Company on the first day of
360 March, 1882.

The St. Louis, Jerseyville and Springfield railroad, extending from Grafton, Illinois, to a point near Bates, Illinois, a distance of 71.4 miles. Said railroad was acquired by lease August 6, 1881.

The Attica, Covington and Southern railroad, extending from Attica, Indiana, to Covington, Indiana, a distance of 14½ miles, leased to said Wabash Company July 18, 1881.

The Michigan City and Indianapolis railroad, extending from Michigan City to La Porte, Indiana, a distance of 12.75 miles, leased to the Wabash Company June 1st, 1881.

The Indianapolis, Peru and Chicago railroad, extending from Indianapolis, Indiana, to Peru, Indiana, a distance of 75 miles, leased to said Wabash Company June 1st, 1881.

The Braidwood Branch, being a line ten and nine-tenths miles long, extending from near Braidwood, Illinois, to the Chicago
361 Branch of the Wabash railroad. Said branch is partially constructed, and was built by moneys arising from the sale of general mortgage bonds aforesaid.

The Champaign and Southeastern railroad, extending from Champaign, Illinois, to Sidney, Illinois, a distance of 11.6 miles, which was leased by the Wabash Company March 1st, 1882.

The Madison County railroad, extending from Edwardsville, Illi-

nois, to its junction with the Chicago and Alton railroad, a distance of 8.5 miles, acquired by the Wabash Company by purchase.

The Humeston and Shenandoah railroad, extending from Humeston to Shenandoah, Iowa, a distance of 113 miles, in which the Wabash Company owns a one-half interest.

Certain real estate and terminal privileges in Burlington, Iowa, more particularly described in mortgage hereinafter referred to.

362 The bridge over the Mississippi river at St. Louis, with the tunnel and terminal rights in said city, leased by said Wabash Company and the Missouri Pacific Railway Company, as set forth in a certain lease hereinafter referred to.

The bridge over the Mississippi river at Hannibal, Missouri, leased by the two last-named companies, as set forth in a lease hereinafter referred to.

Certain right of use of the bridge over the Missouri river at Kansas City, Missouri, held under a lease or contract with Hannibal and St. Joseph Railroad Company hereafter referred to.

The right to use certain tracks and terminal facilities in Cook county, Illinois, and in Chicago, Illinois, under lease or contract with the Chicago and Western Indiana Railroad Company hereinafter referred to.

The right to use certain tracks and terminal facilities owned by the Peoria and Pekin Union Railway Company in Illinois,
363 under contract with said last-named company, dated February 1st, 1881, hereafter referred to.

The right to use certain tracks and depot facilities in the Union depot in Kansas City, Missouri, under contract with the Kansas City Depot Company, dated June 1st, 1876, hereinafter referred to.

The right to use certain tracks and depot facilities in the Union depot in Hannibal, Missouri, under contract with Hannibal Depot Company, dated June 30, 1881, hereinafter referred to.

The right to use certain tracks and depot facilities in the Union depot in St. Joseph, Missouri, under contract with St. Joseph Union Depot Company, dated September 2, 1880.

The right to use certain tracks and depot facilities in the Union depot at Detroit, Michigan, under contract October 20, 1881, hereinafter referred to.

364 The right to use certain tracks extending from Clayton, Illinois, to Quincy, Illinois, and certain depot and station facilities in said last-named city, said right arising under a contract or lease dated January 1st, 1878, between the Chicago, Burlington and Quincy Railroad Company and said Wabash Company.

An interest in the Elevator Company at Council Bluffs, Iowa, upon which a payment to the amount of $41,666.66 has been made by the Wabash Railway Company, for which no certificate has been issued.

Three hundred coal cars acquired from the National Rolling Stock Company November 23rd, 1883, under an agreement to pay

mileage on the same, with privilege of purchase at end of any one year, etc.

The following tracts or parcels of land, the title to which was taken in the name of James F. How, as trustee, before the ap-
365 pointment of receivers in this cause:

Marion county, Iowa:

Lot 6, subdiv. of S. 7, T. 77, R. 21.

In the city of Chicago, State of Illinois:

In the assessor's div. of N. W. ¼ of W. ½ N. E. ¼, sec. 32, T. 39 N., R. 14 east, b'k 13.

In Brown's Addition in the N. E. ¼, sec. 32, T. 39 N.; R. 14 E.; lot 8, in block 3; lots 8, 9, 43, 44, in block 4.

Gallaher's subdiv. of the S. ½ of block 9, in canal trustees' subdiv. of sec. 33, T. 39 N., R. 14 east.

Lots 19, 20, and 28, in block 2; lots 24, 34, 31, and 32, in block 1.

T. J. Foster's subdiv. of the part of block 10, canal trustees' subdiv., S. 33, T. 39 N., R. 14 east.

Lots 1 and 37, in bl'k 1, and lots 1 and 37, in bl'k 2.

Guno's subdiv. of part block 10, canal trustees' subdiv., sec. 23, T. 39 N., R. 14 east, lot 47.

Canal trustees' subdiv. of sec. 33, T. 39 N., R. 14 E.; S. W. part, 364.6, and 480 ft. of block 12.

366 Sutton's subdiv. of bl'k 28 of canal trustees' subdiv., S. 33, T. 39 N., R. 14 E.

Lots 5, 44, and 45, in block 2.

In assessor's div. of bl'k 11 of canal trustees' subdiv., sec. 33, T. 39 N., R. 14 E.

Lots 61 and 62, in block 11.

In the city of St. Joseph, State of Missouri:

In South St. Joseph Addition to said city—Lots 1, 2, 3, 4, 5, 6, and and 7, in block 56; lots 1, 2, 3, 4, 5. 6, and 7, in block 57; lots 5, 6, and 7, in block 58; lots 12, 13, and 14, in block 55.

In the city of St. Louis, State of Missouri:

In Scott's Addition to said city—Lots 25, 26, 1, 2, 36, 33, and four feet and eight inches of lot 32 of block 6.

The court also finds and adjudges that the Wabash Company acquired title to the following lines of railroad, with all the franchises and property, real and personal, and all choses in action,
367 rights, incomes, revenues, and credits pertaining thereto or used in connection therewith by the use of the general mortgage bonds aforesaid, and that said lines, rights, property, and interests were purchased by said company with said general mortgage bonds, viz:

The Peoria, Pekin and Jacksonville railroad, hereinbefore described.

The Springfield and Northwestern railroad, hereinbefore described.

The Braidwood Branch, hereinbefore described.

It is adjudged that as to all property, rights, interest, and choses

in action acquired by the Wabash Company after the execution of said general mortgage, whether described in the same or not (except such as are herein otherwise adjudged and such as pertain to railroads not herein declared to be subject to the general mortgage), the lien of said mortgage attached and is now in force.

368 It is, however, adjudged that the said general mortgage on the property of the Wabash Company did not attach to or become a lien on the railroad or property of the Havana, Rantoul and Eastern Railroad Company.

The court finds that said mortgage was duly recorded as required by law, and for all the contents and provisions thereof and for the terms and provisions of the bonds secured thereby and the coupons attached thereto reference is hereby made to a true copy of said mortgage filed by said Wabash Company with its original and amended bills in this cause, marked Exhibit "B" and commencing on page 1 of volume 1 of the printed volume of exhibits.

The court further finds and adjudges that afterwards, on the first day of May, A. D. 1883, for the purpose of securing an intended issue of its bonds (called collateral trust bonds), amounting

369 to ten million- of dollars, said Wabash Company executed and delivered to the Mercantile Trust Company of New York, as trustee, a certain other indenture, called and known as "the collateral trust," and thereby assigned and transferred to said last-named company, for the purposes of said trust, all the bonds, stocks, cars, steamboats, rolling stock, and interest in real estate specified in said instruments, and then and there delivered all said bonds, stocks, and evidences of title to said trustee.

And for the terms and conditions of said collateral trust and of the bonds and coupons intended to be secured thereby reference is hereby made to a true copy thereof filed by said Wabash Company with its original and amended bills herein, marked Exhibit "D," appearing in said printed volume 1 of exhibits, beginning on page 33.

370 The court finds and adjudges that at the time of the execution of the collateral trust the said Wabash Company transferred and delivered to the Mercantile Trust Company, trustee under said instrument, certain stocks, bonds, assignments, bills of sale, and other evidences of title to property, real and personal, pledged in and by said collateral trust, and that said stocks, bonds, assignments, bills of sale, and other evidences of title were as follows, this decree adopting the description given in said instrument and the preamble by which said description is introduced therein:

Whereas the Wabash, St. Louis, and Pacific Railway Company has deposited with the Mercantile Trust Company of New York assignments, bills of sale, or other evidences of title to the following-described bonds, shares, real estate, and other property, viz:

$46,000 Union Bridge Company bonds.

371 $1,342,000 Humeston and Shenandoah Railway Company first-mortgage 7 per cent. bonds.

$1,000,000 Wabash, St. Louis and Pacific Railway Company general mortgage six per cent. bonds.

$400,000 Wabash Railway Company — mortgage seven per cent. bonds of 1879.

$199,000 Wabash, St. Louis and Pacific Railway Company, Detroit Division, six per cent. bonds.

248,000 Quincy, Missouri and Pacific Railroad Company income bonds.

$1,711,000 Toledo, Peoria and Western Railroad Company first-preferred income bonds.

$728,000 Toledo, Peoria and Western Railroad Company second-preferred income bonds.

13,404 shares Toledo, Peoria and Western Railroad Company.

10 shares St. Joseph Union depot.

210 shares Union Depot Company of Kansas City, Missouri.

10 shares Hannibal Union Depot Company.

372 5,187 shares Des Moines Northwestern Railway Company.

2,214 shares Havana, Rantoul and Eastern Railroad Company.

9,996 shares Des Moines and St. Louis Railroad Company.

20,127 shares Humeston and Shenandoah Railroad Company.

21,534.96 shares Missouri, Iowa and Nebraska Railway Company.

9,000 shares St. Louis, Jerseyville and Springfield Railroad Company.

2,030 shares Clarinda and St. Louis Railroad Company.

14,246 shares Quincy, Missouri and Pacific Railroad Company.

5,380 shares St. Louis Ottumwa and Cedar Rapids Railway Company.

11,089 shares Council Bluffs and St Louis Railway Company.

7,281 shares St. Louis, Council Bluffs and Omaha Railroad Company.

4,332 shares Brunswick and Chillicothe Railroad Company.

373 2,687 shares Centreville, Moravia and Albia Railroad Company.

750 shares Attica, Covington and Southern Railway Company.

1,665 shares American Refrigerator Transit Company of Illinois.

60 shares Union Bridge Company of Toledo, Ohio.

17 shares St. Louis County Railroad Company.

4,994 shares Peoria and Pekin Union Railway Company.

9,999 shares Chicago and Western Indiana Railroad Company.

12,500 shares St. Louis Bridge Company, common stock.

1,160 shares St. Louis and Mississippi Valley Transportation Company.

Steamers now on Lake Erie, known as the Russell Sage, John C. Gault, A. L. Hopkins, and Morley.

15 locomotives, manufactured by the Rhode Island Locomotive Works.

13 passenger cars, manufactured by Barney, Smith & Co.

374 5 baggage cars, manufactured by Barney, Smith & Co.

1,210 freight cars, manufactured by Barney, Smith & Co.

All the right, title, and interest of said party of the first part in and to certain rolling stock, being all the rolling stock mentioned

and described in certain agreements between the party of the first part and the New York and Pacific Car Trust Association.

But the court finds that of the stock of the Des Moines Northwestern Railway Company the said Mercantile Trust Company now holds only 5,037 shares subject to said mortgage.

The said collateral trust also embraced and attached to certain real estate therein referred to, situate in the county of Cook and State of Illinois, held in trust for said Wabash Company by Solon Humphreys, *in* which the court finds was conveyed to said Solon
375 Humphreys alone, in trust for said Wabash Company. Said real estate is more particularly described as follows:

The whole of lots 1 and 2, in block 9;

The whole of lots 3 and 4, in block 9;

The whole of lots 5 and 6, in block 9,

All in Springer and Fox'- Addition to the city of Chicago, in Cook county, State of Illinois.

Also, assessors' division of the N. W. $\frac{1}{4}$ and W. $\frac{1}{2}$ N. E. $\frac{1}{4}$, section 32, town. 39 N., range 14 east, all lying east of the South Branch of the Chicago river, of latitude 32, and all being in the county of Cook aforesaid.

It is further found and adjudged by the court that of the general mortgage bonds intended to be issued as aforesaid there were in fact issued and are now outstanding and unpaid a number thereof, the principal of which amounts to seventeen million dollars, and that there is due for interest thereon and upon coupons attached
376 thereto since the latter matured the further sum of two millions one hundred and thirty-two thousand seven hundred and fifty-three dollars and forty cents up to December 1, 1885, of which number sixteen millions of dollars were sold for value, and the remaining one million were hypothecated to the Mercantile Trust Company of New York, as trustee in the collateral trust mortgage, and now held subject to said trust, an- reference is hereby made to the report of the special master, to whom was referred the matter of taking proof as to the number and amount of said bonds now outstanding, the amount of principal and interest due thereon, and the names of the parties owning and holding the same as far as now known.

The court further finds that the Wabash Company, on the
377 first day of June, A. D. 1884, made default in the payment of all the interest which became due on said bonds on said day, and that such default has continued ever since that time; that said company also made default in the payment of all installments of interest maturing on said bonds since said first day of June, A. D. 1884, and that all such defaults have continued ever since.

The court finds further that demand was duly made by the holders of a large number of said bonds and coupons at the office of said Wabash Company, in the city of New York, for the payment of the interest maturing thereon on the first day of June, A. D. 1884, such demand being made on or after said day, and payment was then and there refused.

That in the month of December, 1885, after the said default had

continued for more than six months after the maturity of said
378 coupons, on the first day of June, 1884, and the demand made for the payment thereof as aforesaid, the holders of more than a majority in value of all the general mortgage bonds then outstanding and secured by said general mortgage determined that they required the principal of all said bonds then outstanding to become at once due and payable, and so notified the trustees named in said mortgage, and also give notice in writing to said trustees of their having so determined, and thereby required said trustees to exercise the powers conferred on them by said mortgage to enforce the payment of the indebtedness and to proceed to foreclose the said mortgage by judicial decree.

It is therefore adjudged and decreed by the court that the principal sums specified in the general mortgage bonds aforesaid, as well as the interest thereon, have now become due and payable
379 according to the terms and conditions of said instrument.

The court, being fully advised, also finds and adjudges that of the collateral trust bonds aforesaid there were issued and either sold for value or so pledged as to entitle the parties holding the same to the proceeds thereof and the security created therefor as aforesaid the whole amount of ten million of dollars of principal; that there is due thereon to Dec. 1, 1885, the additional sum of $1,109,268.80 as interest on said bonds and on coupons attached thereto since the maturing of such coupons.

That the Wabash Company made default in the payment of interest maturing on said collateral trust bonds on the first day of May, A. D. 1884, and on each installment of interest maturing since that time; that demand was duly made for the payment
380 of interest maturing as aforesaid on the first day of May, A. D. 1884, at the office of the Wabash Company, in the city of New York, by the holders of a large number of said bonds and coupons, such demand being made on and after said first day of May, 1884; that after said default had been so made and after the demand aforesaid the holders of more than twenty-five per cent. of all said collateral bonds then outstanding, in writing, requested the Mercantile Trust Company aforesaid to proceed under the power contained in said indenture to sell all or a sufficient amount of the securities in said collateral trust mentioned to produce a sum sufficient to pay all the principal and interest of said entire issue of said bonds; *the* due notice of such request and of the purpose of said trustee to comply therewith was given to the Wabash
381 Railway Company more than sixty days before said Mercantile Trust Company filed its cross-bill herein, but that all said property embraced in said collateral trust being under the control of this court, said trustee did not exercise its power of sale, but filed its cross-bill for the foreclosure of said instrument as a mortgage. The court therefore adjudges and decrees that the holders of said collateral trust bonds are now entitled to have the property embraced in said collateral trust sold and the proceeds applied to the payment of both the principal and interest of said bonds.

And for the number of said collateral trust bonds now outstand-

ing and the names of the persons owning or holding the same reference is hereby made to the report of the master, to whom said matter was referred by order of court.

382 The court further adjudges that upon the execution and recording of the general mortgage aforesaid the same became and was and still is a lien on the lines of railroad, franchises, interests, and property described in said mortgages as having been conveyed to said trustees at the time of the execution thereof, and that the said mortgage also became a lien on all the right, title, and interest of the Wabash Company in and to all such other lines of railroad, with all their property, rights, and franchises, as are described in said mortgage *a* being then in course of amalgamation with the property of said Wabash Company. The said last-mentioned lien attached to each of said lines of railroad, with the franchises and property thereof, to the extent of the interest and title of the Wabash Company therein, whether acquired at the time of the execution of the said mortgage or after that time.

383 The court also adjudges, as aforesaid, that the Wabash Company, before or after the execution of said general mortgage, by lease, consolidation, purchase, or contract, acquired title to or interests in certain other lines of railroad, franchises, or property not specifically described in said general mortgage, but hereinbefore referred to; that the lien of said general mortgage under the terms and provisions thereof attached to all of said railroads, franchises, property, rights, choses in action, and interests to the extent of the title and interest of the Wabash Company therein; but the court adjudges that the lien so created on any line of railroad, franchises, interests, or property acquired by the Wabash Company after the execution of said general mortgage was and is subject to any lien prior or subsequent thereto created to secure the purchase-money of said railroad, franchise, property, or interest, or to secure the performance of any condition on which said Wa-

384 bash Company acquired the same.

It is further adjudged that at the time of the execution of said collateral trust and the delivery of the stocks, bonds, assignments, bills of sale, and other evidence of title to the property embraced therein by the Wabash Company to the Mercantile Trust Company, as trustee, said instrument became a lien on all the right, title, and interest of said Wabash Company in and to all the property, rights, and interests embraced in said collateral trust in favor of all owners and holders of said bonds, and that said lien is still in force.

It is further ordered and adjudged that this decree or any sale made thereunder shall not in any way prejudice or affect the rights of parties to or persons interested in certain mortgages, deeds of trust, leases, and contracts hereinafter set forth, but all the

385 rights of such persons and parties are hereby reserved to them.

The deeds of trust, mortgages, leases, and contracts in regards to which such reservation is made are as follows:

A mortgage or deed of trust to secure the principal and interest

of bonds amounting to $900,000, with interest thereon at the rate of 7 per cent. per annum, executed by the Toledo and Illinois Railroad Company to the Farmers' Loan and Trust Company, as trustee; said mortgage became a lien on that portion of said railroad extending from Toledo, Ohio, to the Indiana State line, a distance of 75.5 miles. The said interest was paid up to August 1st, 1884, except that represented by certain coupons funded under an agreement made in 1877.

A mortgage dated August 1st, 1853, executed by the Lake Erie, Wabash and St. Louis Railroad Company to the Farmers'
386 Loan and Trust Company, as trustee, to secure bonds amounting to $2,500,000, with interest at the rate of 7 per cent. per annum; said mortgage became a lien on that portion of the railroad of the Wabash, St. Louis and Pacific Railway Company extending from the western boundary of the State of Ohio at the western terminus of the Toledo and Illinois railroad to the eastern boundary of Illinois, a distance of 166.1 miles.

A deed of trust, dated October 15th, 1858, executed by the Toledo and Wabash Railroad Company to Edwin D. Morgan, as trustee, to secure bonds amounting to $1,000,000, with interest thereon at the rate of 7 per cent. per annum; said deed of trust became a lien on that portion of said railroad extending from Toledo, Ohio, to the eastern boundary of the State of Indiana, all lying within the State of Ohio.

387 A deed of trust, dated October 15, 1858, executed by the Wabash and Western Railway Company to Edwin D. Morgan, as trustee, to secure the payment of bonds amounting to $1,500,000, with interest thereon at 7 per cent. per annum; said deed of trust became a lien on all the said line of railroad in the State of Indiana extending from the west line of the State of Ohio to the east line of the State of Illinois, a distance of 166.1 miles.

A deed of trust, dated May 25, A. D. 1863, executed by the Great Western Railway Company of 1859 to George Griswold, Alexander M. White, and Henry Worden, as trustees, to secure bonds amounting to $2,496,000, with interest thereon at the rate of 7 per cent. per annum; that said mortgage became a lien on all said lines of railroad extending from Meredosia and Naples, in the State of
388 Illinois, to the eastern boundary of Illinois, being 180.7 miles in length.

A deed of trust, dated May 11, A. D. 1865, executed by the Great Western Railway Company of 1859 to Solon Humphreys and James R. Jessup to secure bonds amounting to $2,500,000, with interest thereon at the rate of seven per cent. per annum, which said deed of trust became a lien on all that portion of railroad last above described.

A deed of trust, dated March 1st, 1862, executed by the Illinois and Southern Iowa Railroad Company to John N. A. Griswold, James R. Jessup, and Lucien Tilton, as trustees, which became a lien on all that portion of the railroad aforesaid extending from Carthage, Illinois, to Clayton, Illinois, a distance of 29.1 miles, said

mortgage being executed to secure bonds amounting to
389 $300,000, with interest at six per cent. per annum, said interest being paid up to August 1st, 1884, except coupons funded as aforesaid.

A deed of trust dated May 29, 1865, executed by the Quincy and Toledo Railroad Company to John T. Terry, as trustee, to secure the payment of bonds amounting to $500,000, with interest at seven per cent. per annum, which deed became a lien on all that portion of railroad extending from the west bank of the Illinois river opposite Meredosia to Camp Point and Clayton, in the State of Illinois, a distance of 33.6 miles.

A deed of trust, dated the 1st day of February, A. D. 1867, executed by the Toledo, Wabash and Western Railway Company to Isac H. Knox and James R. Jessup, as trustees, to secure an intended issue of bonds amounting to $15,000,000, with interest at seven per cent. per annum thereon; that of the bonds so intended to
390 be secured by said trust deed only $2,610,000 are now outstanding.

Said deed of trust became a lien on all said railroad extending from Toledo, Ohio, to Meredosia and Naples, Illinois, and from Meredosia to Camp Point, Illinois, and also from Clayton, Illinois, to the east bank of the Mississippi river at Hamilton, Illinois; also on all property afterwards acquired by said Toledo, Wabash and Western Railway Company which might be used in connection with said railroad and all property that said company might acquire in the city of Quincy, Illinois, and also all interests of said company for traffic purposes with the Chicago, Burlington and Quincy Railroad Company.

A deed of trust, dated June 3rd, A. D. 1869, executed by the Decatur and East St. Louis Railroad Company to Isac H. Knox, as trustee, to secure the payment of bonds amounting to
391 $2,700,000, with interest at seven per cent. per annum thereon. Said mortgage became a lien on all said railroad extending from Decatur, Illinois, to East St. Louis, Illinois.

A deed of trust, dated May 17, 1879, executed by the Wabash Railway Company to Solon Humphreys and Daniel A. Lindley, as trustees, to secure the payment of bonds amounting to $2,000,000, with interest at the rate of seven per cent. per annum; which deed of trust became a lien, subject to other prior liens, on the following lines of railroad, with all their franchises, property, issues, rents, and profits: All the railroad of said Wabash Railway Company extending from the city of Toledo, Ohio, through the State of Indiana and thence into the State of Illinois to Meredosia, with branch of said road to Naples and East Hannibal, and from Meredosia to
392 Camp Point, in the State of Illinois, and with branch of said road from Clayton to the east bank of the Mississippi river, at Hamilton, in said State, and with branch of said road leading from Decatur to East St. Louis, in the same State. Said interest was paid up to October 1st, 1884.

A deed of trust, dated May 16, 1879, executed by the Wabash Railway Company to Alfred T. White, as trustee, to secure the pay-

ment of bonds amounting to $500,000, with interest at seven per cent. per annum. Said deed of trust became a first lien on all *all* of said railroad extending from Naples, Illinois, to East Hannibal, Illinois, and was given to secure the purchase-money of said property.

A deed of trust, dated March 9, 1865, executed by the North Missouri Railroad Company to Edwin D. Morgan and Louis H.
393 Meyer, as trustees, to secure the payment of bonds amounting to $6,000,000, with interest thereon at the rate of 7 per cent. per annum. Said de-d of trust became a lien on all that portion of the railroad of the Wabash Company extending from St. Louis, Missouri, to Coatsville, Missouri, and from Moberly, Missouri, to North Missouri Junction, about eight miles from Kansas City, Missouri. The railroad embraced in said deed of trust is about 354.1 miles in length.

A deed of trust, dated August 12, A. D. 1874, executed by the St. Louis, Kansas City and Northern Railway Company to the Farmers' Loan and Trust Company of the City of New York, as trustee, to secure the payment of bonds amounting to $3,000,000, with interest thereon at 7 per cent. per annum. Said mortgage became a lien on all the railroad of the St. Louis, Kansas City and Northern Railway Company in the State of Missouri, being 353 miles in length,
394 as then constructed, from North Market street, in the city of St. Louis, to the southern boundary line of the State of Iowa, and from Moberly, Missouri, to North Missouri Junction, in Clay county, Missouri, and as the same might be thereafter constructed through Clay county a distance of about eight miles to the bridge across the Missouri river, at Kansas City, in Jackson county, Missouri.

Also as the same might then or thereafter be located in or through the county of St. Louis to connect with the Union depot in said city.

Also as the same might then or thereafter be located south of North Market street, in said city of St. Louis, together with all real estate, right of way, shops, rolling stock, depot, appurtenances, property, and franchises of said property.

Also certain blocks and lots of land, structures, and buildings described in said mortgage, a copy of which is marked Sub-ex-
395 hibit "F," No. 14, and is filed with the amended bill of the Wabash, St. Louis and Pacific Railway Company, consolidated in this cause.

A mortgage, dated October 1st, A. D. 1878, executed by the St. Louis, Kansas City and Northern Railway Company to Henry F. Vail and Charles Parsons, as trustees, *the* secure the payment of bonds amounting to $1,000,000, with interest at 6 per cent. per annum, which interest has been paid to October 1st, 1885; which said mortgage became a lien on all the bridge- of said last-named company and all franchises thereof and all the real estate, approaches, and appurtenances thereof situated in the county of St. Louis, on the south side of the Missouri river, and in the county of St. Charles, on the north side of said river, in the State of Missouri.

A deed of trust executed by the St. Louis, Kansas City and North-

ern Railway Company on the 9th day of July, A. D. 1878, to
396 Solon Humphreys and George A. Leighton, as trustees, to secure the payment of bonds amounting to $388,500, with interest at the rate of 7 per cent. per annum, which interest has been paid up to October 1st, 1885. Said deed of trust became a second lien on all the bridge franchises and property last above described.

A deed of trust, dated February 15th, A. D. 1879, executed by the St. Louis, Kansas City and Northern Railway Company to the United States Trust Company of New York, as trustee, to secure the payment of bond- amounting to $2,350,000, with interest thereon at the rate of 7 per cent. per annum; that said deed of trust became a lien on a line of railroad purchased by said last-named company from the Council Bluffs and St. Louis Railroad Company, a corporation of the State of Missouri, extending from Elm Flats, in Daviess county, Missouri, in a northwesterly direction through the
397 counties of Daviess, Gentry, Nodaway, and Atchison, in — State, to the boundary line between the States of Missouri and Iowa, a distance of 78 miles; and said deed of trust also became a lien on the leasehold interest of said St. Louis, Kansas City and Northern Railway Company in and to a certain other line of railroad extending from Council Bluffs, in the State of Iowa, in a southeasterly direction, through the counties of Pottawattamie, Mills, Fremont, and Page, in said State, to the boundary line between the States of Iowa and Missouri, a distance of 65 miles, said last-mentioned railroad having been leased by said St. Louis, Kansas City and Northern Railway Company from the Council Bluffs and St. Louis Railway Company, a corporation of the State of Iowa, as said railroad was then or might thereafter be constructed, together
398 with all franchises, rights, and other appurtenances thereto belonging.

A guaranty mortgage, dated February 15th, A. D. 1879, executed by the Council Bluffs and St. Louis Railway Company to the United States Trust Company of New York, intended to further secure the principal and interest of the issue of bonds last beforementioned. Said mortgage became a lien on all the right, title, and interest of said Council Bluffs and St. Louis Railway Company in and to the line of railroad last aforesaid, commencing at Council Bluffs, Iowa, and extending to the boundary line between the States of Iowa and Missouri, with all the rights, franchises, and property of mortgagor company therein, as then or thereafter constructed.

A deed of trust, dated July 15, 1879, executed by the St. Louis, Kansas City and Northern Railway Company to George I. Seney, of New York, to secure bonds amounting to $264,000, with
399 interest thereon at the rate of 6 per cent. per annum. Said trust deed became a lien on all that part of said railroad extending from Roseberry, Missouri, to the State line between the State- of Missouri and Iowa, being 10.1 miles in length, and also upon all the right, title, and interest of said grantor company in and to that portion of railroad between said State line and Clarinda, Iowa, a distance of 11.4 miles, which said grantor company acquired from the Clarinda and St. Louis Railroad Company of Iowa.

A guaranty trust deed, dated July 15, 1879, executed by the Clarinda and St. Louis Railroad Company to George I. Seney, as trustee, to secure the payment of bonds amounting to $264,000, with interest at 6 per cent. per annum, being the bonds last aforesaid; which deed of trust became a lien on all the right, title, and
400 interest of said last-mentioned company in the railroad commencing at the town of Clarinda, in the State of Iowa, and extending in a southerly direction through the county of Page, in the State of Iowa, to the boundary line between the States of Iowa and Missouri.

A de-d of trust, dated July 1st, 1879, executed by the Champaign, Havana and Western Railroad Company to Henry W. Ford and Richard S. Brock, as trustees, intended to secure the payment of bonds amounting to the sum of $1,450,000, of which $340,900 are now outstanding, with interest thereon at the rate of 7 per cent. per annum; which deed of trust became a lien on the railroad, property, and franchises of said grantor company extending from the city of Champaign, in the county of Champaign, in the State of Illinois, running thence by way of White Heath, Clinton, Lincoln, and Mason City to Havana, near the east bank of the
401 Illinois river, with a branch extending from White Heath to Decatur, all said points being in the State of Illinois, and said railroad and branch being of the aggregate length of 131 miles.

A deed of trust, dated on the first day of December, A. D. 1880, executed by the Wabash, St. Louis and Pacific Railway Company to Henry F. Spaulding and John T. Terry, as trustees, intended to secure the payment of bonds amounting to $1,600,000, with interest thereon at the rate of 6 per cent. per annum; of which bonds so intended to be secured only $1,200,000 were ever issued. Said deed of trust became a lien on the railroad and franchises last above described, and said bonds were issued for the purpose of being exchanged for the bonds last above described.

A deed of trust, dated February 6th, 1880, executed by the
402 Centreville, Moravia and Albia Railroad Company to the Farmers' Loan and Trust Company, as trustee, to secure bonds amounting to $400,000, with interest thereon at six per cent. per annum; which deed of trust became a lien on the railroad and franchises of the last-named railroad company projected to extend from a junction with the railroads of the Missouri, Iowa and Nebraska Railroad Company in the vicinity of Centreville, Appanoose county, Iowa, to a junction with the railroad of the Central Iowa Railway Company in the vicinity of Albia, Monroe county, Iowa, being about twenty-four miles in length.

A deed of trust, dated March 1st, 1881, executed by the Missouri, Iowa and Nebraska Railway Company to the Mercantile Trust Company of New York, as trustee, to secure the payment of bonds amounting to $2,269,000, with interest thereon at the rate of
403 six per cent. per annum, and which deed of trust became a lien upon the railroad, franchises, and property of said last-named company, extending from Keokuk, Lee county, Iowa, to the south line of said county and State; thence through the counties of

Clarke, Scotland, and Schuyler, in the State of Missouri, to the north line of said State; thence through the counties of Appanoose, Wayne, and Decatur to Van Wert, Iowa, said line being about 143½ miles in length.

That said deed of trust by its terms referred to a certain prior deed of trust, dated June 1st, 1870, executed by the Missouri, Iowa and Nebraska Railway Company to the Farmers' Loan and Trust Company, as trustee, to secure an issue of bonds amounting to $3,025,000, with interest, and being a lien on the same property in whole or in part. The said deed of trust of March 1st, 1881, and the deed
404 of trust of June 1st, 1870, are to be taken together as representing substantially the same debt, and are to be taken together with any judgment or decree rendered by any competent court upon any of the bonds thereby secured.

A deed of trust, dated May 22, 1880, executed by the Toledo, Peoria and Western Railroad Company to Philip Henry Brown, Robert C. Martin, and John Paton, as trustees, to secure the payment of an issue of bonds amounting to $4,500,000, with interest thereon at seven per cent. per annum. Said deed became a lien on the railroad, franchises, and property of said last-named company, extending from a point at the eastern boundary of the State of Illinois, where it connects with the Toledo, Logansport and Burlington railway, and extending westwardly to the western boundary
405 of the State of Illinois, in the *the* city of Warsaw, and in the town of Hamilton, Illinois, on the Mississippi river, and also from La Harpe to Burlington, Iowa, in the State of Iowa. The said company was a corporation of the State of Illinois and not of Missouri, as by mistake stated in the amended bill of the Wabash Company. This court does not by this decree determine whether said last-mentioned deed of trust did or did not become a lien on any property in the city of Burlington, Iowa.

A deed of trust, dated May 22, 1880, executed by said Toledo, Peoria and Western Railroad Company to Charles E. Whitehead, J. P. Giraud Foster, and William Hill, as trustees, to secure issues of income bonds aggregating to 3,900,000, with interest at the rate of 4 per cent. per annum; which deed of trust became a lien on
406 all the railroad, franchises, and property last above described, but subject to the lien of the trust deed last above described.

A deed of trust, dated July 1st, 1880, executed by said Wabash Railway Company to Henry F. Spaulding and John T. Terry, as trustees, to secure bonds amounting to $4,500,000, with interest at 5 per cent. per annum; that said trust deed became a lien on the railroad, franchises, and property extending from Effingham, in the county of Effingham, Illinois, by way of Strawn, in Livingston county, in said State, to Streator, in the county of La Salle, with a branch to Altamount, Illinois, being the railroad formerly known as the Chicago and Paducah railroad, and also upon the railroad formerly known as the Chicago and Strawn railway, extending from Strawn aforesaid to or near Chicago, Illinois. Said bonds so
407 secured were issued for the purchase-money of the railroad, franchises, and property described therein.

A deed of trust, dated May 31, 1881, executed by the Humeston and Shenandoah Railroad Company to W. J. Ladd and John T. Terry, as trustees, to secure bonds amounting to $2,684,000, with interest at the rate of 7 per cent. Said mortgage became a lien on the railroad, franchises, and property of said last-named company, extending from a point at Humeston, Iowa, 100 feet west of where the Chicago, Burlington and Quincy railroad crosses the Missouri, Iowa and Nebraska railroad; thence west to Shenandoah, Iowa, about 112 miles, with all its property and franchises.

A deed of trust, dated February 28, 1881, executed by the Des Moines Northwestern Railway Company to the Central Trust
408 Company of New York and James Cheney, as trustees, for the purpose of further securing a portion of the bonds issued by the said Wabash Company and secured by its general mortgage aforesaid. Said deed of trust became a lien on all the railroad, property, and franchises of said grantor company extending from Des Moines, in the State of Iowa, to Fonda, in said State, a distance of 114.9 miles, said railroad being a narrow-gauge road; also that the bonds secured by said deed of trust were so issued for the uses and purposes therein defined, and all rights as between the Des Moines Northwestern Railway Company and any party to this cause or the receivers herein arising from said mortgage or the lease of the railroad of said company to the Wabash Company or the contract
409 under which they were made are hereby expressly reserved from the operation of this decree, and shall be hereafter enforced only in some court having jurisdiction of the property covered by said lease and mortgage.

And any claim that the receivers herein may set up against said Des Moines Northwestern Railway Company or the property thereof shall be litigated in some court having jurisdiction of said railroad, and any claim of said railroad company against said receivers or the property in their possession may be litigated in the circuit court of the United States for the southern district of Iowa, Eastern Division.

A deed of trust, dated February 17, 1881, executed by the Attica, Covington and Southern Railway Company of Indiana to the Central Trust Company of New York and James Cheney, as
410 trustees, to further secure a portion of the general mortgage bonds of the Wabash Company secured by the general mortgage aforesaid; that said deed of trust became a lien on the railroad, property, and franchises of said Attica, Covington and Southern Railway Company of Indiana, extending from Attica, Fountain county, Indiana, to Covington, in said county, a distance of 14.5 miles, and the bonds thereby secured were equal to ten thousand dollars for each mile of said road.

A deed of trust, dated October 1, 1881, executed by the Wabash, St. Louis and Pacific Railway Company to the Mercantile Trust Company of New York, as trustee, to secure bonds amounting to $3,857,000, with interest at the rate of five per cent. per annum. Said deed of trust became a lien on the Cairo Division of the Wabash, St. Louis and Pacific Railway Company, extending from Dan-

ville, Illinois, to St. Francisville, in said State, and from Vin-
411 cennes, Indiana, by way of St. Francisville, to Cairo, Illinois, with all the property thereof. Said bonds were issued in payment of the purchase-money of said railroad and property.

A deed of trust, dated April 1, 1879, executed by the St. Louis Bridge Company to J. C. Rogers and C. E. Tracey, as trustees, to secure an issue of bonds amounting to $5,000,000, with interest thereon at the rate of seven per cent. per annum, which deed of trust became a lien on the property of said St. Louis Bridge Company, as therein described.

A deed of trust, dated November 3rd, 1881, executed by the said Wabash Company to the Mercantile Trust Company of New York and James Cheney, as trustees, to secure bonds amounting to about $2,052,000, with interest thereon at six per cent. per annum; that said deed of trust became a lien on that portion
412 of the railroad of the Wabash Company formerly known as the Detroit, Butler and St. Louis railroad, extending from a point on the Detroit, Grand Haven & Milwaukee railroad in or at Detroit, Michigan, where the said Detroit, Butler and St. Louis railroad intersects it, and running thence in a southwesterly direction through the counties of Wayne, Washtenaw, Monroe, and Lenawee, in Michigan, and the counties of Fulton and Williams, in Ohio, and the county of De Kalb, in Indiana, to Butler, in said State, being about 114 miles in length, with all the property and franchises pertaining to said railroad, and all property then in possession or which might be thereafter acquired for the convenience of said railroad and its business; that said trust deed was also given to remove all doubts as to the validity of a prior trust deed between the same parties, and was given to secure the purchase-money of said railroad and property.

413 A deed of trust, dated February 1st, 1881, executed by the Peoria and Pekin Union Railway Company to the Central Trust Company of New York, as trustee, to secure bonds amounting to $1,500,000, with interest at the rate of six per cent. per annum. Said deed of trust became a lien on the property and franchises of said Peoria and Pekin Union Railway Company. Also a second mortgage executed by said last-named company to the Central Trust Company of New York, as trustee, dated February 1st, 1881, to secure an issue of income bond- amounting to $1,500,000, with interest not exceeding six per cent. per annum; that said deed of trust became a lien on all said property last aforesaid, subject to the superior lien of said prior mortgage or trust deed.

A deed of trust, dated January 1st, 1867, executed by the
414 Chicago, Cincinnati and Louisville Railroad Company to George T. M. Davis, as trustee, to secure bonds amounting to $1,000,000, with interest at the rate of seven per cent. per annum. Said deed of trust became a lien on all the railroad, franchises, and property of said last-named company, extending from Peru, Indiana, to La Porte, Indiana, a distance of 71.51 miles, such lien operating on said line whether then or thereafter constructed.

A deed of trust, dated June 1st, 1871, executed by the Indianapolis,

Peru and Chicago Railway Company to Clifford A. Hand, as trustee, to secure bonds amounting to $275,000, with interest thereon at the rate of seven per cent. per annum. The said deed of trust became a lien on the railroad, property, and franchises of said last-named company, extending from Indianapolis, in the county of
415 Marion, Indiana, through the counties of Hamilton, Tipton, and Howard to the city of Peru, in the county of Miami, Indiana, a distance of seventy-five miles.

A certain other second deed of trust, dated June 1st, 1881, executed by said last-named railroad company to Wager Swayne and Abram W. Hendricks, as trustees, to secure an intended issue of bonds not to exceed $2,275,000, of which only $2,000,000 were ever issued, with interest thereon at the rate of six per cent. per annum. Said deed of trust became a lien on the railroad, franchises, and property of said last-named company, being the railroad and property last described.

A deed of trust, dated June 1st, 1881, executed by the Michigan City and Indianapolis Railroad Company to Abraham W. Hendricks and Wager Swayne, as trustees. Said deed of trust
416 became a lien on the railroad, franchises, and property of said last-named railroad company, extending from Michigan City, in the county of La Porte, Indiana, to La Porte, in the same county, a distance of 12.75 miles. The said trust deed and the two trust deeds last before described are to be taken together as explaining each other.

A deed of trust, dated November 4, 1881, executed by the St. Louis, Jerseyville and Springfield Railroad Company to the Central Trust Company of New York and James Cheney, of Indiana, as trustees, to secure a portion of the said general mortgage bonds of the Wabash Company, amounting to $15,000 for each mile of railroad embraced therein. Said deed of trust became a lien on the
417 railroad, franchises, and property of the said St. Louis, Jerseyville and Springfield Railroad Company, extending from a point on the railroad of said Wabash Company at or near New Berlin or between New Berlin and Springfield, in Sangamon county, Illinois, to its terminus at Grafton or Jersey Landing, in Jersey county, Illinois, a distance of 71.4 miles, and that said bonds were issued to secure the performance of the condition on which the Wabash Company acquired said railroad and property.

A deed of trust, dated Dec. 1st, 1881, executed by the Des Moines and St. Louis Railroad Company to the Central Trust Company of New York and James Cheney, as trustees. Said deed of trust was given to further secure a portion of the aforesaid general
418 mortgage bonds of the Wabash Company, amounting to $15,000 per mile for each mile of the *mile of the* railroad hereinafter described. Said deed of trust became a lien on the railroad, branches, and property of said grantor company, extending from Albia, Iowa, to Des Moines, Iowa, a distance of 67.3 miles, and was given to secure the performance of the condition on which said Wabash Company acquired said railroad and property.

A deed of trust, dated March 1st, 1881, executed by the Cham-

paign and Southeastern Railway Company to the Central Trust Company of New York and James Cheney, as trustees, to further secure a portion of the general mortgage bonds of the Wabash Company, amounting to $15,000 for each mile of the railroad hereinafter described. Said trust deed became a lien on the railroad,
419 franchises, and property of said grantor company, extending from Champaign, Illinois, to Sidney, Illinois, a distance of $11\frac{6}{10}$ miles, and was given to secure the conditions on which said railroad and property *was* acquired by said Wabash Company.

A deed of trust, executed September 1st, 1880, by the Wabash, St. Louis and Pacific Railway Company to J. P. Giraud Foster and Edward K. Goodnow, as trustees, to secure the payment of seventy-three promissory notes for the sum of one thousand dollars each, with interest at the rate of six per cent. per annum. Said deed of trust was given to secure the purchase-money of the property described therein and became a lien on lots 13, 13*a*, 14, 15, 15*a*, 16, 17, 18, 19, 20, 21, 22, 23, and 24, all in the original plat of the
420 city of Burlington, in the county of Des Moines, Iowa, and upon all the railroad iron therein and on all improvements and appurtenances thereof and all rents, issues, and profits thereof. The court further adjudges that four of said notes have been paid and satisfied, and further adjudges that the said deed of trust is a lien upon the property therein described superior to and free and clear of any lien or charges for the payment or contribution to the payment of any claims or demands whatever chargeable against such property herein.

A deed of trust, dated May 1st, 1873, made by the Boone County and Booneville Railway Company to J. M. Worden and R. A. Betts, as trustees, to secure bonds amounting to $100,000, with interest at 7 per cent. per annum. Said trust deed became a lien on a railroad extending from Columbia, Missouri, to Centralia, Mis-
421 souri, a distance of about 21 miles.

A deed of trust, dated 1st of October, 1875, made by the St. Louis, Ottumwa and Cedar Rapids Railway Company to Solon Humphreys and George S. Coe, as trustees, to secure bonds amounting to $322,500, with interest at the rate of 7 per cent. per annum. Said deed of trust became a lien on a line of railroad extending from Ottumwa, Iowa, to its intersection with the St. Louis, Kansas City and Northern railway at the Missouri State line.

A deed of trust, dated August 1st, 1878, executed by the Brunswick & Chillicothe Railroad Company to George M. Rice, J. Kimball, and E. P. Burnham, as trustees, to secure bonds amounting to $304,500, with interest at the rate of 6 per cent. per annum. Said deed of trust became a lien on the railroad of said grantor
422 company from its intersection with the St. Louis, Kansas City and Northern railway at Brunswick, Missouri, to Chillicothe, Livingston county, Missouri, a distance of about 36 miles.

A deed of trust, dated September 14, 1872, executed by the St. Louis, Council Bluffs and Omaha Railroad Company to James B. Eads and J. A. Jamison, as trustees, to secure bonds to the amount of $626,000, with interest at the rate of 6 per cent. per annum. Said

trust deed became a lien on the line of railroad extending from Chillicothe, Missouri, to a point at or near Pattonsburg, Daviess county, Missouri, being about 43 miles in length.

A deed of trust, dated October 1st, 1879, executed by the Quincy, Missouri and Pacific Railroad Company to Solon Humphreys and Orville H. Browning to secure bonds amounting to
423 $1,204,000, with interest at the rate of 6 per cent. per annum. Said deed of trust became a lien on the line of railroad extending from a point in Missouri opposite the city of Quincy, Illinois, to Trenton, Missouri, a distance of about 134 miles.

A deed of trust, dated October 1st, 1879, executed by the Quincy, Missouri and Pacific Railroad Company to Amos Green and Charles H. Bull, as trustees, to secure income bonds to an amount not exceeding $2,000,000, with interest thereon at the rate of 6 per cent. per annum, if earned. Said deed became a lien on the line of railroad last above described.

A lease made by Eel River Railroad Company to the Wabash Company, dated August 26, 1879, of a railroad extending from Butler, Indiana, to Logansport, Indiana, on which rent was paid
424 to June 1st, 1884.

A lease of the Quincy, Missouri and Pacific railway by Wabash Company, August 21, 1879. Said railroad intended to extend from West Quincy, Missouri, to some point on the Missouri river, but never constructed west of Trenton, Missouri, said rent being paid to January 1st, 1884.

A lease of the St. Joseph and St. Louis railroad, dated June 1st, 1874, to St. Louis, Kansas City and Northern Railway Company, said road extending from St. Joseph, Missouri, to North Lexington, in said State, the said rent being paid to March 1st, 1884.

A lease of the Boone County and Booneville railroad to the St. Louis, Kansas City and Northern Railway Company, dated May 1st, 1873. Said railroad extends from Centralia, Missouri, to Columbia, Missouri, and said rental was paid to May 1st, 1885.

425 A lease of the St. Louis, Ottumwa and Cedar Rapids railway to the St. Louis, Kansas City and Northern Railway Company, dated October 1st, 1875. Said railroad extends from Coatsville, Missouri, to Ottumwa, Iowa, and said rent was paid to October 1st, 1884.

A lease of the St. Louis, Council Bluffs and Omaha railroad to the St. Louis, Kansas City and Northern Railroad Company, executed June 20th, 1878. Said railroad extends from Chillicothe, Missouri, to Pattonsburg, Missouri, said rent being paid to January 1st, 1885.

A lease of the Brunswick and Chillicothe railroad to the St. Louis, Kansas City and Northern Railway Company, dated Aug. 1st, 1878. Said railroad extends from Brunswick, Missouri, to Chillicothe,
426 Missouri, and said rental is paid to August 1st, 1885.

A lease of the Council Bluffs and St. Louis railway (in Iowa) to St. Louis, Kansas City and Northern Railway Company, dated February 10, 1879. Said railroad extends from Council Bluffs, Iowa, to the State line between Missouri and Iowa, and said rent was paid to October 1st, 1884.

A lease of the Clarinda and St. Louis railroad to St. Louis, Kansas City and Northern Railway Company, dated July 15, 1879. Said railroad extends from Clarinda, Iowa, to the State line between Iowa & Missouri. Said rent is paid to August 1st, 1884.

Lease by the Chicago and Western Indiana Railroad Company to the Wabash Company, dated October 25th, 1879, and a
427 supplemental lease or contract, dated November 1st, 1882, by the Chicago and Western Indiana Railroad Company to the Wabash Company, in which Anthony J. Thomas and Charles Edward Tracy are made parties of the third part, as trustees.

A lease of the Centreville, Moravia and Albia railroads to the Missouri, Iowa and Nebraska Railway Company, dated February 6th, 1880. Said railroad extends from Centreville, Iowa, to Albia, Iowa, and said rental is paid up to January 1st, 1884.

A lease of the Missouri, Iowa and Nebraska railroad to the Wabash Company, dated September 3rd, 1880. Said railroad runs from Keokuk, Iowa, to Van Wert, Iowa, and said rent is paid up to March 1st, 1884.

A lease of the Toledo, Peoria and Western railroad to the
428 Wabash Company, dated May 22nd, 1880. Said railroad has been hereinbefore described. The said rent was paid to April 1st, 1884.

A lease of the Humeston and Shenandoah railroad to the Wabash Company and Chicago, Burlington and Quincy Railroad Company, dated April 1st, 1881. Said railroad has been hereinbefore described.

A lease of the Des Moines Northwestern railroad to the Wabash Company, dated February 28th, 1881. Said railroad has been hereinbefore described, and said rent has been paid to December 1st, 1883.

A lease of the Attica, Covington and Southern railroad to the Wabash Company, dated July 18th, 1881. Said railroad has been hereinbefore described, and said rent was paid up to December 1st, 1883.

429 A lease of the St. Louis bridge and tunnel to the Wabash Company and Missouri Pacific Railway Company, dated July 1st, 1881; also includes other stipulations and provisions.

A lease of the Peoria and Pekin Union railroad to the Wabash Company and other companies, dated February 1st, 1881. This includes other stipulations and provisions. The property embraced in said instruments has been hereinbefore described.

A lease of the Indianapolis, Peru and Chicago railway to the Wabash Company, dated June 1st, 1881. Said railroad has been hereinbefore described, and said rental has been paid up to December 1st, 1883.

A lease of the Indianapolis and Michigan City railroad to the Wabash Company, dated June 1st, 1881. Said railroad has
430 been hereinbefore described, and said rental has been paid up to December 1st, 1883.

A lease of the St. Louis, Jerseyville and Springfield railroad to the Wabash Company, dated November 22, 1880. Said railroad has been hereinbefore described, and said rental was paid up to December 1st, 1883.

A lease of the Des Moines and St. Louis railroad to the Wabash Company, dated March 1st, 1882. Said railroad has been hereinbefore described, and said rental has been paid up to December 1st, 1883.

A lease of the Champaign and Southeastern railway to the Wabash Company, dated March 1st, 1882. Said railroad has been hereinbefore described, and said rental has been paid up to December 1st, 1883.

A lease of the Hannibal bridge to the Wabash Company
431 and the Missouri Pacific Railway Company, dated January 1st, 1883. Said bridge and property has been hereinbefore described.

A contract between the St. Joseph Union Depot Company, the Wabash Railway Company, and other companies for the construction and use of a depot and terminal facilities in St. Joseph, Missouri, dated September 2nd, 1880.

A like contract with the Kansas City Union Depot Company, dated June 1st, 1876, the St. Louis, Kansas City and Northern Railway Company being a party thereto before said Wabash Company was created.

A lease and contract between Detroit Union Railway Depot and Station Company and the Wabash Company for the use of
432 certain grounds by the last-named company and for certain privileges and advantages in said contract specified. Said lease and contract is dated October 20, 1881, and a copy thereof is hereby referred to as Sub-exhibit "F" 89, filed herein with the amended bill of the Wabash Company.

A contract for the construction and use of depot and grounds in Hannibal, Missouri, between the Hannibal Union Depot Company and Wabash Company, dated June 30, 1881, a copy of said contract being Sub-exhibit "F" No. 90, filed with the amended bill of said Wabash Company in said cause.

A contract between the Hannibal and St. Joseph Railroad Company for the use by said last-named company of the bridge over the Missouri river at Kansas City, Missouri, dated June 1st,
433 1880, a copy of which is filed as Sub-exhibit "F" No. 83 in the volumes of exhibits aforesaid.

It is adjudged by the court that the lien of the general mortgage on any leasehold interest or other conditional interest held or owned by the Wabash Company in or to any line or lines of railroad or any property, rights, or franchises shall not be held to impair the right of the lessor or lessees of such line or lines or the person or persons under whom the said line or lines were conditionally held by the Wabash Company to terminate *and* such lease or conditional interest because of any breach of the terms on which the same was granted to said Wabash Company. The declaration herein of a lien on such property in favor of said general mortgage shall not be held to revive any leasehold or conditional title in said Wabash Com-
434 pany in any instance when the same has been heretofore lawfully terminated, or to prevent the future termination thereof for the breach of any condition for which such lease or interest might

be otherwise lawfully terminated or forfeited; and in all cases when any line or lines of railroad have been by order or decree of court surrendered to the trustee or trustees in underlying and senior mortgages or to any receiver or person appointed by the court in whose jurisdiction the property is situated, the said leases under which such line or lines were formerly held by said Wabash Company shall be, and are hereby, adjudged and decreed to be lawfully terminated.

The court further finds that since the filing of the original bill of complaint herein by the Wabash Company the holders of all the collateral trust bonds and the holders of a very large majority of the general mortgage bonds desiring to avoid any contro-
435 versyes to the priority of said instruments as creating liens on any of the property embraced in the collateral trust, and also to avoid all delay in effecting the foreclosure of said instruments and the sale of all said property, have entered into an agreement between themselves and have invited all the other holders of general mortgage bonds to become parties thereto.

And reference is hereby made to a copy of said agreement, filed with the report of Edmund T. Allen, special master, to whom this cause was referred to take proof on specified issues. The said copy is hereby referred to with the same effect as if embodied herein.

By the terms of said agreement both instruments are to be foreclosed by judicial decree or decrees and all property embraced therein sold under such decree & decrees. A committee was by said
436 agreement appointed, authorized to purchase all said property or any portion thereof for the benefit of all handholders joining in said agreement or accepting the same. The property so to be purchased shall be conveyed to a corporation to be organized for that purpose, and that the owners of both classes of bonds shall be entitled to the securities of such new company on such terms as are in said agreement prescribed

The court therefore adjudges and decrees that if the property embraced in the general mortgage and collateral trust, respectively, and the rights and interests declared to be comprised therein or subject thereto by the terms of this decree shall be sold under this decree, then all the holders of general mortgage bonds or collateral trusts bonds who shall have signed or accepted said agree-
437 ment, and all other of said bondholders who shall not, within ninety days after the filing of this decree, file in this court their written dissent from said agreement, and their desire to litigate the question of priority of the liens of said general mortgage and collateral trust as to the property embraced in the latter instrument, shall be bound by the said agreement, and as to bondholders so bound the agreement aforesaid shall be held to settled and determine *of* all such questions of priority and superiority.

In case any of the holders of general mortgage bonds shall not sign or accept said agreement, and shall within the time limited as aforesaid file in this court their dissent therefrom, and their desire that any question of priority as aforesaid shall be litigated in said cause, then such issue as may be necessary shall be made up as the

court shall direct; but the foreclosure of said general mort-
438 gage and collateral trust and the sale of the property embraced therein shall not be delayed thereby; but such litigation shall be determined with reference to the proceeds of the sale of the property embraced in said collateral trust, a sufficient portion of which shall be retained under the control of the court to protect the rights of such possible litigants.

The court further finds that there is now pending in the supreme court of the State of Ohio a certain cause in which James Compton and certain other persons named in the record thereof seek to establish and maintain a lien adjudged in their favor by the court of common pleas of Lucas county, in the State of Ohio, upon the line of railroad of said Wabash Company, extending from Toledo, Ohio, to the eastern boundary of the State of Indiana. An appeal
439 having been taken from the said judgment and decree of said court of Lucas county to said supreme court, it is ordered that this decree shall in no way affect the rights of said Compton and his co-complainants as the same shall be determined by said supreme court. Any sale of the property aforesaid under this decree shall be subject to such rights and interest as said supreme court shall adjudge in said cause.

And now the court, being fully advised, does hereby order, adjudge, and decree that within sixty days from this date the Wabash Railway Company or some person or persons for it pay to the Central Trust Company of New York, for the benefit of the parties entitled, the full sum of money found due as principal and interest aforesaid on said general mortgage bonds and coupons, to-
440 gether with interest from this date, at the rate of six per cent. per annum, and all costs of this suit except such as the court may otherwise apportion; that in default thereof the said general mortgage be foreclosed, and all the property, rights, and interests aforesaid conveyed thereby or upon which said mortgage is a lien, as hereinbefore decreed, be sold, excepting as hereinafter set forth; and it is hereby ordered, adjudged, and decreed that the following-name- lines of railway, heretofore by order of this court severed from the Wabash system and surrendered to the trustees in underlying and senior mortgages or to some receiver, person, or persons appointed by the Federal court in whose jurisdiction said lines are situated, to wit:

Havana Division, formerly known as the Champaign, Havana and Western railway; Indianapolis, Peru and Chicago railroad;
441 the Chicago, Cincinnati and Louisville railroad; the Michigan City and Indianapolis railroad, together constituting the Indianapolis, Peru and Chicago Division; the Quincy, Missouri and Pacific railway; the Missouri, Iowa and Nebraska railway; the Cairo and Vincennes railway; the Danville and Southwestern railroad, and St. Francisville and Lawrenceville railroad, together constituting the Cairo Division; and the Toledo, Peoria and Western Railroad, and also the Centreville, Moravia and Albia railroad, shall not be sold at said sale, nor shall any interest in said lines or any or either of them pass by the sale herein provided for, but the com-

plainants herein and all persons interested in said lines are hereby remitted to the said several Federal courts in whose jurisdic-
442 tion said lines are situated for the adjudication and settlement of their respective claims and interests. The court fu-ther finds the Wabash Company to be wholly insolvent, and the property, rights, and interests embraced in the general mortgage wholly insufficient security for the amount of indebtedness found due as aforesaid. It is ordered that the sale of said property, rights, and interests be without redemption, and said sale, when made and confirmed by the court and all the conditions thereof fully performed, shall forever bar and foreclose all right, title, and equity of redemption of said Wabash Company in said railroads, property, interests, and franchises and each part thereof, and also all the rights and interests of all persons claiming through or under said com-
443 pany subsequent to said general mortgage, and also all the rights and interests of all the parties hereto, except so far as the same are by this decree established or reserved.

It is also adjudged and decreed that said Wabash Company, or some person for it, within sixty days from this date pay to the Mercantile Trust Company of New York the amount of principal and interest found due as aforesaid on said collateral trust bonds, with interest thereon from this date, at the rate of six per cent. per annum, and also such share of the costs of this proceeding as the court shall apportion. In default thereof all the property, securities, rights, and interests covered by and described in the collateral trust shall be sold, and all the right, title, and interest of the Wabash Company therein, and of all persons claiming through or under said
444 company, be forever barred and foreclosed, and also all the rights and interests therein of all parties to said cause, except so far as the same are hereby established or reserved. The court finds and adjudges that all the property embraced in said collateral trust is wholly insufficient to pay the indebtedness secured thereby, and orders that the said property be sold without redemption.

It is further ordered and decreed that if the holders of a majority of the general mortgage bonds, acting through their committee appointed under their agreement aforesaid, shall be satisfied that any branch or portion of the lines of railroad or property embraced in and covered by said mortgage and in or to which the Wabash Company had only a leasehold or conditional title shall be wholly
445 insufficient in value to discharge the liens resting thereon superior to said general mortgage, and that sale of such branches or portions of railroad or property would add nothing to the purchase price obtainable for all said property, the commissioner shall, at the request of such committee, proceed to sell such branches or portions of railroad, with all the rights and property pertaining thereto, separately from the other property covered by said mortgage.

It appearing to the court that since the commencement of this cause the receivers herein have under orders of this court purchased and paid for, in whole or in part, certain lands and lots adjacent to the lines of railroad constituting the Wabash system, the

title thereof being taken to James F. How, as trustee, said How
446 being the agent of said receivers, it is hereby ordered and decreed that all the lands and lots aforesaid so purchased by said receivers be sold with the main lines of road covered by the general mortgage; that an account be hereafter taken of all the moneys paid by said receivers for the lands and lots so purchased by them; that after the sale of the property embraced in the general mortgage there shall be taken out of the proceeds of such sale and out of the proceeds of all property sold in connection therewith a sum sufficient to repay to said receivers the amount of money expended by them in the purchase of the lands and lots aforesaid, so far as the same have been paid for, and said receivers shall hold the moneys so to be repaid to them, to be expended under the orders of court, for the general purposes of said receivership. Upon
447 the sale of said property and upon full compliance with the conditions of said sale by the purchasers thereof said James F. How, trustee, shall, upon order of court, make proper conveyance of the said property to such purchasers.

The court further orders that the sale under this decree of any property, rights, or interest covered by said general mortgage shall not have the effect of debarring the holders of said general mortgage bonds or their trustees from foreclosing any other mortgages or deeds of trust given to secure said general mortgage bonds or portions thereof, whether such other mortgages or deeds of trust embrace some of the lines of railroad and property covered by the general mortgage or otherwise; but if the sale or sales under this de-
448 cree shall not produce a sufficient sum to pay and satisfy all the said general mortgage bonds the holders thereof and their trustees shall be at liberty to resort to such other mortgages and deeds of trust as fully in force and effect.

It is further ordered and adjudged that this decree or any sale made thereunder of the property embraced in the collateral trust shall not prevent the owners of the collateral trust bonds, so far as said bonds shall remain unpaid after the application of the proceeds of said sale thereto, from resorting to any other instrument, mortgage, or pledge for the protection of the title to the property so embraced in said collateral trust; but the said bondholders and the purchasers of the property, rights, and interests embraced in
449 the collateral trust, at any sale made under this decree, shall be at liberty to resort to such other instrument, mortgage, or pledge for the protection of their title to the property so embraced in said collateral trust and sold under the foreclosure thereof.

The court orders and decrees that, subject to conditions aforesaid, the property covered by the general mortgage and collateral trust be sold at public auction to the highest bidder or bidders, at the east front door of the United States court-house, in the city of St. Louis, in the State of Missouri, between the hours of 10 a. m. and 4 p. m., on such day as the commissioner hereinafter named shall appoint, with power to the commissioner making the sale for proper
450 cause to postpone said sale without further notice, save an

announcement of such postponement by said commissioner at the time fixed for such sale.

Public notice of the time, place, and terms of said sale shall be given by publication at least once a week for six successive weeks before said sale in one public newspaper in each of the following-named cities: New York city, New York; St. Louis, Missouri, and such other places at the courts having ancilliary jurisdiction of this cause or any of them may direct. Said notice shall describe the property to be sold in general terms, and shall refer to this decree for more particular description.

Said sale shall be made in manner following:

The commissioner executing this decree shall, except as
451 hereinabove otherwise provided, first offer for sale of all the right, title, and interest of the Wabash Company in and to all the lines of railroad covered by and described in the general mortgage, and such other lines, interest, and property as have been adjudged in this decree to have become subject to the lien of said mortgage, with all the franchises, rights, interest, and property, real and personal, pertaining thereto, and all rights of way, equipments, structures, shops, tools, machinery, and materials properly belonging or appurtenant to said lines and each of them, excepting only such of said lines, with the property, franchises, interests, and appurtenances, as are herein adjudged to be subject to said general
452 mortgage only to the extent of the leasehold or conditional title of the Wabash Company therein, and also excepting all property described in the collateral trust, whether covered by the general mortgage or not so covered, and which may be sold or offered for sale separately as hereinbefore directed. In case any such line or property shall not be sold together with the other property covered by the general mortgage the same shall be offered separately, and the commissioner shall conditionally accept the highest bids received therefor.

The commissioner shall then offer for sale the property embraced in the collateral trust in manner following: He shall offer all the bonds, stocks, and choses in action specified in said collateral
453 trust together, and note the bids received therefor. He shall also offer the cars, rolling stock, and equipment described in said instrument for sale together, and note the bids received therefor. He shall then offer the steamers described in said instrument together, and note the bids received therefor. He shall then offer seperately the real estate or terminal interests in Cook county, Illinois, described in said instrument, and note the bids received therefore.

After said properties and securities covered by the collatteral trust have been so offered for sale separately the commissioner shall proceed to offer the whole thereof for sale together, and he shall
454 conditionally accept the highest bids made for said lots or parcels of property and securities, when offered separately, or the highest bid for all said property when offered together, according as the one method or the other shall produce the largest sum in the aggregate. Before any bid for any property sold under

this decree shall be conditionally accepted by the commissioner he shall require the person or persons making such bid to deposit with him or subject to his order, in some bank to be by the commissioner selected, a sum in cash equal to ten per cent. of the whole amount of said bid when the amount of such bid shall be more than $100,000, and twenty per cent. on all bids below that sum. As soon as
455 any sale or sales shall have been made by the commissioner in pursuance of this decree, he shall report the same to this court for confirmation, further certify to the court compliance by the purchaser or purchasers with the conditions hereinbefore prescribed.

456 If any such bid shall be accepted by the court, and the party making the same shall fail to comply with all the conditions of sale and all orders of the court made or to be made with respect thereto, then the sum so deposited shall be forfeited, and shall be applied to the payment of the expenses of resale or the costs of this cause or the payment of the bonds aforesaid, as the court shall order.

In case any bid shall be rejected by the court the deposit made by the bidder shall be returned.

And if any bid or bids shall be accepted and confirmed by the court and all the conditions of sale shall be fully complied with, or if the persons making such bids shall perform all such con-
457 ditions as the court shall accept as sufficient for the time being, and when the court shall so order the commissioner shall execute to such purchaser or purchasers deeds of conveyance and transfer of all the property and interests sold by him under this decree.

And thereupon the complainants herein, to wit, The Central Trust Company of New York and James Cheney, as trustees of said general mortgage, and also The Mercantile Trust Company, defendant herein, as trustee of the collateral trust mortgage, and the mortgagee, the Wabash, St. Louis and Pacific Railway Company, shall severally and in due form convey to said purchasers all their interest as trustees and as mortgagors in and to the property sold by said commissioners to said purchasers or any of them. Whenever
458 any bid shall be accepted and approved by the court the party making the same shall deposit in such depository as the court shall direct such additional cash payment as the court may require, and make such further cash deposits as may be ordered by the court.

It is further ordered that after the purchasers aforesaid shall have made such cash payments as the court shall order, the said purchasers shall have the right to discharge the remainder of their respective bids by the use of the bonds aforesaid—that is to say, by using the general mortgage bonds and the collateral trust bonds to make payment for the property so purchased.

All said bonds and coupons shall be received in making the payments to which they may be applied respectively ratably and
459 without discrimination, and at such valuation as would be

equivalent to the distributive share applicable thereto if the whole sum bid had been paid in cash.

It is further adjudged that in order to enable the purchasers of said lines of railroad and property to raise the means necessary to discharge all claims, debts, and demands equitably chargeable against the same in preference to said bonds by the use of the securities of the new corporation intended to be organized to take said lines of railroad or the chief part thereof if such purchasers shall make such cash payments as the court shall require and order and discharge the remainder of their bids respectively by the payment of cash or the use of bonds as aforesaid, such purchasers shall
460 be entitled to the conveyance and assignment of the property purchased by them and each of them as hereinbefore provided; but such conveyance or assignment shall not have the effect of discharging any part of said property from the payment or contribution to the payment of claims or demands chargeable against the same, whether for costs and expenses, the expenses of the receivership of said property and the full payment of all the debts and liabilities of said receivers, or upon intervening claims allowed or to be allowed or upon any other claims or allowances that have been or may be charged against said property or any part thereof or said receivers, either by this court or by any other circuit
461 court exercising ancillary jurisdiction or by any other court to which any of the parties hereto, including the receivers, have been hereby remitted in proceedings or actions ancillary hereto or otherwise.

Nor shall such conveyance, transfer, or assignment withdraw any of said railroads, property, or interests to be sold under this decree, as hereinbefore directed, from the jurisdiction of this and the other courts aforesaid, but the same shall remain in the custody of the receivers until such time as the court shall on motion direct said property in whole or, from time to time, in part to be released to said purchasers or any of them, and shall afterwards be subject to be retaken and, if necessary, resold, if the sums so charged or to be charged against said property or any part thereof or said
462 receivers as aforesaid *said* shall not be paid within a reasonable time after being required by order of this or said other courts. The conveyance and transfer of said property shall be subject to the power and jurisdiction of the said courts, and the purchasers of any part of said property shall thereby become and remain subject to said jurisdiction so far as necessary to the enforcement of this decree, and such jurisdiction shall continue until all the claims and demands that have been or may be allowed against said property or any part thereof or said receivers by order of said court shall be fully paid and discharged. The provisions aforesaid shall apply to the purchasers at said sale and to all persons tak-
463 ing said property through or under them. The commissioner executing the decree shall apply the proceeds derived from said sale, and also all the proceeds derived from anybody, natural or artificial, in satisfaction of the claims charged or to be charged

against said property and all parts thereof as aforesaid in the manner following:

First. To the payment of all the costs of this cause in this court and in all other courts wherein ancillary jurisdiction was taken, including such allowances as this and said other courts have or shall make for solicitors' and counsel fees, and for the services of all trustees, masters, commissioners, clerks, stenographers, printers, and others rendering services in the prosecution of the several causes consolidated herein or ancillary to the original; also all the
464 expenses of making said sale or sales and otherwise enforcing and carrying out this decree.

Second. To the payment of all the indebtedness of the receivers herein and all other claims which said courts or some of them may adjud-e to be superior to said bonds, and to the payment of all labor and supply claims falling within the order of this court of May 29, 1884, which now are or may be unpaid.

Third. In payment of all expenses incurred by the committee of bondholders and the purchasing committee in bringing about the said agreement between the holders of the general mortgage bonds and the holders of the collateral trust bonds and of carrying
465 the same into effect, and generally in the reorganization of the Wabash Company, including a proper remuneration for the members of said committee.

Fourth. To the payment of the two classes of bonds aforesaid *pro rata* as far as the same can be paid, in whole or in part, out of the proceeds of said sale or sales or by the application of the bonds aforesaid in lieu *in* purchase-money, under the provisions of this decree relating thereto.

Edmund T. Allen is hereby appointed commissioner to execute this decree. He shall make and file in this court an affidavit faithfully and impartially to execute this decree and to obey the orders of this and the other courts aforesaid in the discharge of the duty hereby imposed.

466 All claims and demands against said property or said receivers or the proceeds of said sales not hereto or herein adjudged and determined, whatever the character of such claims and demands, are hereby reserved for future action by this and said other courts; and all questions arising under any answers of parties hereto and on all cross-bills and other pleadings or intervening petitions not herein or heretofore determined are hereby reserved for future adjudication, the settlement of the same being held not necessary to the purposes of this decree.

It is further ordered that the Central Trust Company of New York and James Cheney and the Mercantile Trust Company of New York or some of them present this decree to the other courts enter-
467 taining ancillary jurisdiction of the said consolidated cause, and pray that the same be approved by said courts and entered as the decree thereof.

All bids conditionally accepted by said commissioner for any railroad property or interest ordered to be sold by this decree shall

be reported to said courts as their several jurisdictions may require and be subject to the confirmation or rejection by said courts.

The court also adjudges that the indemnity mortgage referred to in the bills of complaint herein, made by the Wabash Company to the St. Louis, Iron Mountain and Southern Railway Company, is subject and inferior to the lien of the general mortgage and collateral trust.

468 The statements in this decree of the amount of bonds outstanding or of interest or rental paid or unpaid on any of the mortgages, deeds of trust, leases, or contracts herein declared to be superior to the lien of the general mortgage or collateral trust shall not be taken as adjudication or determining the matters so stated. Such amounts are so stated in this decree only for the purpose of enabling persons who may desire to purchase said property to determine approximately the amount of proper liens or other charges upon said property and each part thereof.

It is ordered that said commissioners make full report of his doings to this court.

DAVID J. BREWER,
Circuit Judge.

(Signed) SAMUEL TREAT,
District Judge.

469 Afterwards, on the 28th day of March, A. D. 1887, there was filed in the office of the clerk of the said court exceptions to the commissioner's report in words and figures following, to wit:

470 In the Circuit Court of the United States for the Western Division of the Southern District of Iowa.

THE UNITED STATES TRUST COMPANY OF NEW YORK, Complainant,
vs.
THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*, Defendants.

In the matter of the intervening petition of Thomas McKissock, receiver, &c., concerning interest in elevator at Council Bluffs.

Exceptions of Receivers Humphreys and Tutt to the Draft of the Special Commissioner's Report.

First exception. For that the special master has found that the elevator in controversy was erected and built by the
471 St. Louis, Kansas City & Northern R'y Co., the Union Pacific R'y Co., the Chicago & Northwestern R'y Co., the Chicago, Milwaukee & St. Paul R'y Co., and the Chicago, Burlington & Quincy R'y Co., whereas he should have found that the said elevator was erected by a corporation styled the "Union Elevator Company."

Second exception. For that the special commissioner has found that the said elevator is immediately connected with the main line of railway of the Wabash, St. Louis & Pacific R'y Co., whereas it is not so connected.

Third exception. For that the special commissioner has erred in finding that the erection and maintenance of an elevator is and was necessary to the proper conduct of its business as shippers of grain and its handling and shipment thereof.

472 Fourth exception. For that the special master has erred in finding that the said elevator was and is a common appurtenance to the said railways, and that the sixth interest therein of the Wabash, St. Louis & Pacific R'y Co. was and is an appurtenance belonging to its line of railway and was and is covered and conveyed by complainant's mortgage, and that it forms a part of the mortgage security.

Wherefore these said receivers do except to the said report and appeal therefrom to the judgement of this court.

SOLON HUMPHREYS,
THOMAS E. TUTT, *Receivers*,
By H. S. PRIEST, *Solicitor*.

Filed March 28th, 1887.

H. K. LOVE, *Clerk*.

473 Afterwards, on the 28th day of September, A. D. 1887, there was filed in the office of the clerk of said court a petition in words and figures following, to wit:

474 In the Circuit Court of the United States for the Western Division of the Southern District of Iowa.

UNITED STATES TRUST COMPANY OF NEW YORK, Complainants, *vs.* WABASH, ST. LOUIS & PACIFIC RAILWAY CO. *et al.*, Defendants. } In Equity.

In the matter of the intervening petition of Thomas McKissock, etc., concerning the interest in the Omaha elevator.

Petition of Purchasing Committee to be Made Parties Defendant Herein.

Your petitioners, James F. Joy, Thomas H. Hubbard, Edgar T. Welles, and O. D. Ashley, represent that on the 1st day of June, A. D. 1880, said Wabash, St. Louis and Pacific Railway Com-

475 pany, for the purpose — securing an intended issue of the mortgage bonds to the amount of fifty millions of dollars, to be known as general mortgage bonds, and the payment of the principle and interest thereof, duly executed and delivered to the Central Trust Company of New York and James Cheney, of Indiana, as trustees, its mortgage or deed of trust known as the general mortgage, and thereby conveyed to said trustees, for the purposes in said general

mortgage fully set forth, certain lines of railroad and certain interest, as the same then existed or might thereafter exist, in and to certain other lines of railroad, all the property, franchises, rights, incomes, and choses in action pertaining thereto, as well as all appurtenances or property used in connection therewith.

476 That afterwards, on the 1st day of May, A. D. 1883, for the purpose of securing an intended issue of its bonds called collateral trust bonds, amounting to ten millions of dollars, said Wabash Company executed and delivered to the Mercantile Trust Company, as trustee, a certain other indenture, called and known as the collateral trust mortgage, and thereby assigned and transferred to said last-named company, for the purposes of said trust, all the bonds, stock, cars, steamboats, rolling stock, and interest in real estate set forth in said instrument, and then and there delivered all of said bonds, stock, and evidences of title to said trustee.

That petitioners, as trustees and as a purchasing committee, purchased on the 26th day of April, 1886, certain premises, fran-

477 chises, and property of the said defendant, The Wabash, St. Louis & Pacific Railway Company, at a sale made in pursuance of the decree of foreclosure of said general mortgage and collateral trust mortgage, entered in the above-entitled cause on the 6th day of January, 1886.

That among the premises, franchises, and property so purchased as aforesaid was all the right, title, and interest of the said Wabash, St. Louis and Pacific Railway Company in and to certain elevator at Omaha, owned by the Omaha Elevator Company, a corporation in the State of Iowa; that on the 15th day of ——, 1886, by a decree of this court in the above cause, the sale aforesaid to your petitioners as such trustees was confirmed.

That on the 21st day of September, 1886, an order was

478 made in the above-entitled cause directing Edmund T. Allen, the commissioner appointed by the court to make the aforesaid sale, to execute to your petitioners as trustees proper deeds to the property purchased as aforesaid, and also directing proper deeds to the interest in said property by them respectively held be executed by said Central Trust Company of New York and James Cheney, trustees; the Mercantile Trust Company, trustee of said Wabash, St. Louis and Pacific Railway Company, and Solon Humphreys and James F. How, trustees.

That your petitioners, trustees, now own and hold, in pursuance of said sale, decree of confirmation and deeds to all of the interest of the said Central Trust Company and James Cheney, trustees, and the said Mercantile Trust Company, trustee, and the Wabash,

479 St. Louis and Pacific Railway Company to the said Omaha Elevator Company, owned as aforesaid by the Omaha Elevator Company.

Petitioner further represents that on the — day of ——, 1886, Thomas McKissock, receiver of the Omaha Division of the Wabash, St. Louis and Pacific Railway Company, pursuant to the bill of foreclosure in this cause, filed herein an intervening petition, wherein he represented that the St. Louis, Kansas City and Northern R'y

Co. had contributed from the proceeds of the sale of bonds secured by the mortgage to complainant, in conjunction with five other railway companies, the sum of fourty-one thousand dollars to the capital stock of the Omaha Elevator Company, a corporation
480 organized under the laws of the State of Iowa, and that the said sum so contributed, together with a like sum contributed by the said five other railway companies, was used in building a grain elevator at Council Bluffs, Iowa, for the shipment of grains over the lines of railway so contributing to the capital stock of said company, and that there is yet due upon said subscription of the Wabash, St. Louis and Pacific Railway Company, formerly the St. Louis, Kansas City and Northern R'y Co., the sum of $5,000; that the said interest of the said Wabash Railway Company in said elevator company is an appurtenant to the Omaha Division of said railway, and as such is covered by complainant's mortgage.

Wherefore he prays that Receivers Humphreys and Tutt,
481 of the Wabash, St. Louis and Pacific Railway Company, be required to make an assignment to him of the said interest in said elevator company, and prays the advice of the court concerning the payment of the $5,000 due upon said subscription and the issuance to him of the certificate of stock thereof; that thereafter said court, in the matter of said intervening petition, ordered that the same be referred to F. M. Hunter as special commissioner, and that he take proofs thereon and report the same, together with his findings, both of law and fact, to the said court; and further ordered that a copy of said petition be served upon the solicitor for said Solon Humphreys and Thomas E. Tutt, receivers of the Wabash, St. Louis and Pacific Railway Company, within ten days after the date
482 of said order, and that said Humphreys and Tutt, as such receivers, appear and answer said petition before the next Monday in November, 1886.

Petitioner shows that said Humphreys and Tutt, pursuant to said order, filed their answer to the petition of intervenor, and that upon said petition and answer proof was taken by the said special commissioner, who in effect reported that the said subscription of the said Wabash, St. Louis and Pacific R'y Co. to the stock of the said Omaha Elevator Company was an appurtenant to the Omaha Division, and as such appurtenant was covered and conveyed by the mortgage to complainant; that the receivers, Humphreys and Tutt, in due time filed sufficient exceptions to said report, and that upon said
483 petition, said answer, said report, and said exceptions a final decree was entered by said court on the 27th day of Sept., 1887, decreeing that the said interest in the said elevator passed as an appurtenant to the said Omaha Division, and as such was covered by complainant's mortgage upon said division, and decreeing that said Humphreys and Tutt make an assignment thereof to the intervenor.

These petitioners say that they were not made parties defendant to said petition of intervention; wherefore they pray that as trustees aforesaid they may by order of this court be made parties to said petition, and that they may be allowed to adopt as their answer the

answer aforesaid of said receivers, Humphreys and Tutt, and the exceptions filed as aforesaid to the report of said special
484 commissioner, and that they may be allowed an appeal from said final decree to the Supreme Court of the United States; as in duty bound they will ever pray.

H. S. PRIEST,
Solc. for Petitioners.

485 Filed September 28th, 1887.

H. K. LOVE, *Clerk.*

486 Afterwards, on the 6th day of October, A. D. 1887, the same being the 10th day of the regular September term, A. D. 1887, a decree was filed and entered of record therein in words and figures following, to wit:

487 Circuit Court of the United States, Southern District of Iowa, Western Division.

UNITED STATES TRUST COMPANY OF NEW YORK, Complainant, *vs.* WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others, Defendants.	In Equity.

This cause coming on to be further heard upon the report of F. M. Hunter, Esq., heretofore appointed special commissioner, for the recovery of the interest of the Wabash, St. Louis and Pacific Railway Company in the elevator at Council Bluffs, Iowa, and the exceptions thereto taken by the respondents; and, the same having been argued by counsel, it is ordered, adjudged, and decreed—

1st. That said exceptions be severally overruled, and that
488 said report be, and the same is hereby, confirmed.

2nd. That the mortgage made to the complainant, dated February 15th, 1879, and foreclosed in this action, attached to all the interest of the Wabash, St. Louis and Pacific Railway Company in and to the Union elevator at Council Bluffs, Iowa.

3rd. That the defendants, Solon Humphreys and Thomas E. Tutt, as receivers of the Wabash, St. Louis and Pacific railway, do within ten days after the entry of this decree make, execute, and deliver to Thomas McKissock, as receiver of the Omaha Division of said Wabash, St. Louis and Pacific railway, the petitioner herein, proper assignment of all the interest of said Wabash, St. Louis and Pacific Railway Company or of themselves as said receivers in said Union elevator.

489 4th. That upon the receipt of said assignment and the issue to said petitioner by the Union Elevator Company of the proper certificate of stock, to the amount of $46,666.66, said petitioner do, out of the funds in his hands as said receiver, pay to said Union Elevator Company the sum of five thousand dollars ($5,000.00).

5th. That said respondents, Humphreys and Tutt, out of the funds in their hands as such receivers, pay the costs of this proceeding to be taxed therein.

Defendants and James F. Joy, Thos. H. Hubbard, Edgar F. Welles, and O. D. Ashley, the purchasing committee, in open court praying and appeal from this decree to the Supreme Court of the United States, which is duly allowed—

490 The said applicants to file a bond in the sum of one thousand dollars ($1,000.00), with good and sufficient sureties, conditioned for the due prosecution of such appeal and the payment of all costs adjudged against them.

J. M. LOVE, *Judge.*

Filed Oct. 6th, 1887.

H. K. LOVE, *Clerk.*

491 Afterwards, on the 20th day of October, A. D. 1887, there was filed in the office of the clerk of said court an appeal bond in words and figures following, to wit:

492 Know all men by these presents that we, J. F. Joy, O. D. Ashley, Edgar T. Welles, Thomas H. Hubbard, Solon Humphreys, and Thomas E. Tutt, receivers Wabash, St. Louis and Pacific Railway Company, and Thomas E. Tutt, are held and firmly bound unto Thomas McKissock, receiver, in the full and just sum of one thousand dollars, to be paid to the said Thomas McKissock, receiver, his heirs, executors, administrators, or his successors, jointly and severally, by these presents.

Sealed with our seals and dated this — day of September, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas lately, at the September term, 1887, of the circuit court of the United States for the southern district, western divis-

493 ion, of Iowa, in a suit depending in said court between Thomas McKissock, receiver, as intervening petitioner in cause No. 140, in equity, wherein The United States Trust Company of New York is plaintiff and The Wabash, St. Louis and Pacific Railway Company *et al.* are defendants, there was rendered against the said principal obligors herein a final decree in favor of the said obligee, and the said principal obligors herein have obtained an appeal of the said court to reverse the said final decree in the aforesaid suit;

And whereas said appeal was prayed in open court on the 28th day of September, 1887, to a Supreme Court of the United States to be holden at Washington the second Monday of October next:

494 Now, the condition of the above obligation is such that if the said principal obligors shall prosecute said appeal to effect and pay all costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

JAMES F. JOY. [SEAL.]
O. D. ASHLEY. [SEAL.]
EDGAR T. WELLES. [SEAL.]
THOM. H. HUBBARD. [SEAL.]
SOLON HUMPHREYS, [SEAL.]
Receiver.
THOS. E. TUTT,
Receiver W., St. L. and P. R'y Co.
THOS. E. TUTT. [SEAL.]

Approved by—
J. M. LOVE, *Judge.*

495 October 20th, 1887.

H. K. LOVE, *Clerk.*

496 UNITED STATES OF AMERICA, } ss:
Southern District of Iowa, }

I, H. K. Love, clerk of the circuit court of the United States in and for the southern district of Iowa, do hereby certify the above and foregoing writing, all contained in volume one (1), of which this certificate is a part and parcel, and which is evidenced on the face thereof by my hand and seal of said court, contains a full, true, correct, and complete transcript of the original bill of complaint contained in a certain transcript filed in said court in a certain cause therein pending, wherein The United States Trust Company of New York is complainant and The Wabash, St. Louis and Pacific Railway Company and others are respondents, together with the petition asking the appointment of a receiver therein, the order of the court thereon, and the decree of the court in said cause entered,
497 and the master's report of sale therein filed, and the approval thereof by the court.

Said transcript also contains a full, true, correct, and complete transcript of the petition of intervention of Thomas McKissock, receiver, filed in said cause, praying recovery of interest in elevator at Council Bluffs, Iowa, together with all pleadings, orders, and decrees of the court, report of commissioner and exceptions thereto, and rulings of court thereon, and all the evidence offered and submitted, and all other matters of every kind and description pertaining thereto, as full, true, correct, and complete as appears from the same now on file and of record in my office and under my custody and control.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at my office, at Council Bluffs, in said district, this 5th day of November, A. D. 1887.

{ Seal of Circuit Court of the United States, Southern District of Iowa. }

H. K. LOVE, *Clerk,*
By F. M. HUNTER, *Deputy.*

498 In the Circuit Court of the United States in and for the Southern District, Western Division, of Iowa.

THE UNITED STATES TRUST COMPANY OF NEW YORK, Complainant,
vs.
WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*, Respondents.

In the matter of the petition of intervention of Thos. McKissock, receiver, concerning the assignment of interest in elevators at Council Bluffs, Iowa.

Supplementary Transcript.

499 UNITED STATES TRUST COMPANY OF NEW YORK, Complainant,
vs.
WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*, Respondents.

Now, upon this day, comes the respondent, Wabash, St. Louis & Pacific Railway Company, by H. S. Priest, Esq., its solicitor, and in open court orally prays the allowance of an appeal to the Supreme Court of the United States on the part of said respondent from a decree of this court entered in this cause on the 6th day of October, A. D. 1887, in the matter of the petition of intervention of Thos. McKissock, receiver, concerning the assignment of interest in elevator at Council Bluffs, Iowa; which said decree is as follows:

UNITED STATES TRUST COMPANY OF NEW YORK, Complainant,
vs.
WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY and Others, Respondents.
} In Equity.

500 This cause coming on to be further heard upon the report of F. M. Hunter, Esq., heretofore appointed special commissioner for the recovery of the interest of the Wabash, St. Louis and Pacific Railway Company in the elevator at Council Bluffs, Iowa, and the exceptions thereto taken by the respondents; and the same having been argued by counsel, it is ordered, adjudged, and decreed—

1st. That said exceptions be severally overruled, and that said report be, and the same is hereby, confirmed.

2nd. That the mortgage made to the complainant, dated February 15th, 1879, and foreclosed in this action, attached to all the interest of the Wabash, St. Louis and Pacific Railway Company in and to the Union elevator at Council Bluffs, Iowa.

3rd. That the defendants, Solon Humphreys and Thomas E. Tutt, as receivers of the Wabash, St. Louis and Pacific Railway, do within ten days after the entry of this decree make, execute, and

deliver to Thomas McKissock, as receiver of the Omaha Di-
501 vision of said Wabash, St. Louis and Pacific railway, the petitioner herein, proper assignment of all the interest of said Wabash, St. Louis and Pacific Railway Company or of themselves, as said receivers, in said Union elevator.

4th. That upon the receipt of said assignment and the issue to said petitioner by the Union Elevator Company of the proper certificate of stock, to the amount of $46,666.66, said petitioner do, out of the funds in his hands as said receiver, pay to said Union Elevator Company the sum of five thousand dollars ($5,000.00).

5th. That said respondents, Humphreys and Tutt, out of the funds in their hands as such receivers, pay the costs of this proceeding, to be taxed therein—

Defendants and James F. Joy, Thos. H. Hubbard, Edgar T. Welles, and O. D. Ashley, the purchasing committee, in open court praying and appeal from this decree to the Supreme Court of the United States, which is duly allowed—

502 The said applicants to file a bond in the sum of one thousand dollars ($1,000.00), with good and sufficient sureties, conditioned for the due prosecution of such appeal and the payment of all costs adjudged against them.

J. M. LOVE, *Judge.*

And the court, having heard and considered said application and being fully advised in the premises, considers, orders, & adjudges, and it is by the court considered, ordered, and adjudged, that said application be allowed and appeal granted, the said applicant to to file a bond in the sum of five hundred dollars, with good and sufficient sureties, conditioned for the due prosecution of such appeal and the payment of all cost adjudged against said respondent.

503 In the Circuit Court of the United States.

UNITED STATES TRUST COMPANY, Complainant,
vs.
THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*, Defendants.

In the matter of the intervention of Thos. McKissock, receiver, concerning the interest in the elevator at Council Bluffs.

Know all men by these presents that The Wabash, St. Louis & Pacific R'y Co., as principal, & H. S. Priest, as surety, are held and firmly bound unto Thos. McKissock, receiver, & his successor, intervenor herein, in the sum of five hundred dollars; to the payment of which sum we hereby bind ourselves, our heirs, administrators, & successors.

Signed and sealed by us this 26th day of September, A. D. 1889.

The condition of this obligation is that whereas the said
504 intervenor has recovered a judgment herein investing him, as receiver, with title to the interest of the Wabash, St. Louis

& Pacific R'y Co. in a certain elevator described in the decree herein & his costs; and whereas the said Wabash, St. Louis & Pacific R'y Co. has according to law been granted an appeal by this court to the Supreme Court of the United States in said cause:

Now, therefore, if the said Wabash, St. Louis & Pacific R'y Company shall prosecute its appeal with effect & answer all damages & costs if it fails to make its plea good, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

WABASH, ST. LOUIS & PACIFIC
R'Y COMPANY, [SEAL.]
By H. S. PRIEST, *Agent & Att'y.*
H. S. PRIEST. [SEAL.]

This is satisfactory to me.

THEO. SHELDON.

The above bond approved Sept. 24th, 1889.

O. P. SHIRAS, *Judge.*

Filed Sept. 26, 1889.

H. K. LOVE, *Clerk,*
By F. M. HUNTER, *Deputy.*

505 UNITED STATES OF AMERICA, } *ss:*
Southern District of Iowa, }

I, H. K. Love, clerk of the circuit court of the United States in and for the southern district of Iowa, do hereby certify that the above and foregoing is a full, true, and correct copy of an order of said court entered in the cause therein named, together with an appeal bond as therein ordered, as full, true, and correct as the same appears upon the records of said court and the files of said cause.

Further certify that it is a complete transcript of all filings and orders in connection with the subject-matter therein contained, and is certified as a supplementary transcript of said cause, the original transcript of which is now on file in the clerk's office of the United States Supreme Court.

Witness my hand and seal of said circuit court this 7th day of October, A. D. 1889.

{ Seal of Circuit Court of the United States, Southern District of Iowa. }

H. K. LOVE, *Clerk,*
By F. M. HUNTER, *Deputy.*

Endorsed on cover: S. Iowa C. C. U. S. No. 599. Solon Humphreys and Thomas E. Tutt, receivers of the Wabash, St. Louis & Pacific Railway Company, and James F. Joy, Thomas H. Hubbard, Edgar T. Welles, and O. D. Ashley, purchasing committee, appellants, *vs.* Thomas McKissock, receiver, &c. Filed November 10, 1887.

No. 1403. The Wabash, St. Louis & Pacific Railway Co., appellant, *vs.* Thomas McKissock, receiver, &c. Filed October 18, 1889.

Supreme Court of the United States.

OCTOBER TERM, 1890.

SOLON HUMPHREYS AND THOMAS E. TUTT, Receivers of the Wabash, St. Louis & Pacific Railway Company, and JAMES F. JOY, THOMAS H. HUBBARD, EDGAR T. WELLES AND O. D. ASHLEY, Purchasing Committee,
Appellants,
vs.
THOMAS MCKISSOCK, Receiver, etc.

No. 296.

THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY,
Appellant,
vs.
THOMAS MCKISSOCK, Receiver, etc.

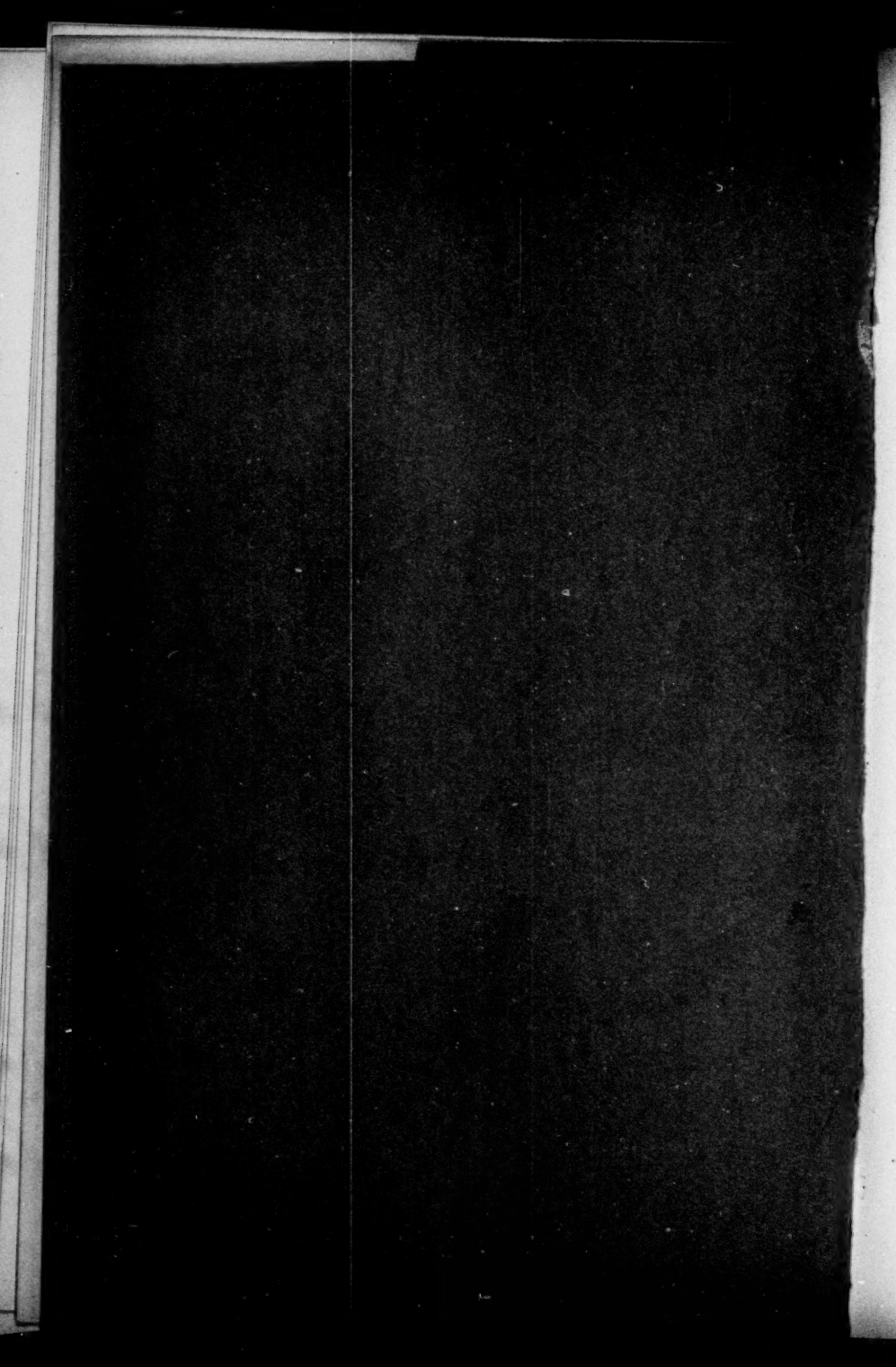
No. 991.

Appeals from the Circuit Court of the United States for the Southern District of Iowa.

Statement and Brief for Appellants.

WELLS H. BLODGETT,
Solicitor for Appellants.

LEVISON & BLYTHE STATIONERY CO., ST. LOUIS.



Supreme Court of the United States.

OCTOBER TERM, 1890.

SOLON HUMPHREYS AND THOMAS E. TUTT, Receivers of the Wabash, St. Louis & Pacific Railway Company, and JAMES F. JOY, THOMAS H. HUBBARD, EDGAR T. WELLES AND O. D. ASHLEY, Purchasing Committee,
Appellants,
vs.
THOMAS MCKISSOCK, Receiver, etc.
No. 296.

THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY,
Appellant,
vs.
THOMAS MCKISSOCK, Receiver, etc.
No. 991.

STATEMENT.

This was an intervening petition filed by Thomas McKissock, receiver of the property covered by a deed of trust, executed on the 15th day of February, 1879, by the St. Louis, Kansas City & Northern Railway Company (afterwards known as the Wabash, St. Louis & Pacific Railway Company) to the United States Trust

Company of New York. The property in controversy, and which the Court below found was covered by said mortgage to the United States Trust Company, is described in the intervening petition as "the interest of the Wabash, St. Louis & Pacific Railway Company in the Union Elevator at Council Bluffs," although it is stipulated as a fact in the case (page 84 of printed record), that *otherwise than as a stockholder in the Union Elevator Company, the Wabash, St. Louis & Pacific Railway Company had no interest in said elevator, or the property of said Elevator Company.*

The prayer of the intervening petition was, that an order be entered directing Solon Humphreys and Thomas E. Tutt, receivers of the Wabash, St. Louis & Pacific Railway Company, to execute and deliver to McKissock, the petitioner, "a proper assignment of the interest of said Wabash, St. Louis & Pacific Railway Company, or of themselves as such receivers, in said elevator."

The intervening petition was filed against Humphreys and Tutt, in a suit brought by the United States Trust Company to foreclose said mortgage of February 15, 1879. It was not filed in the cause wherein Humphreys and Tutt were appointed.

The material facts in the case may be stated, as follows:

First. On the 15th day of February, 1879, the St. Louis, Kansas City & Northern Railway Company (a corporation organized under the laws of the State of Missouri) owned a line of railroad extending in a northeasterly direction, from Elm Flats, in Daviess County, Missouri, through the counties of Daviess, Gentry, Nodaway and Atchison, to the boundary line between the

States of Missouri and Iowa. (Page 12 of printed record.)

Second. At the same time the St. Louis, Kansas City & Northern Railway Company was lessee, for a term of years, of a line of railroad owned by the Council Bluffs & St. Louis Railway Company, extending from Council Bluffs in a southeasterly direction, through the counties of Pottawatomie, Mills, Fremont and Page, to a point on said boundary line between Missouri and Iowa, at which said railroads were connected. (Page 12 of printed record.)

Third. On the same day (February 15, 1879) the St. Louis, Kansas City & Northern Railway Company—to secure the payment of a series of two thousand two hundred and fifty bonds, for the sum of one thousand dollars each—mortgaged and conveyed its leasehold estate in the above described railroad in Iowa, and its title in fee to the above described railroad in Missouri, to the United States Trust Company of New York, as trustee. The property described in the granting clause of the mortgage, made as aforesaid, was as follows: "*All and every part and parcel of the continuous line of railroad, and all right, title and interest therein, as now owned, leased and held by said St. Louis, Kansas City & Northern Railway Company, commencing at Elm Flats, near Pattonsburg, in the State of Missouri, and extending through the counties of Daviess, Gentry, Nodaway and Atchison in the State of Missouri, and through the counties of Page, Fremont, Mills and Pottawatomie in the State of Iowa, to the City of Council Bluffs in said State, as said railroad now is, or may hereafter be constructed, maintained, operated or acquired, to-*

gether with all the grounds, side tracks, water tanks, engines, cars and other appurtenances thereunto belonging." (Page 13 of printed record.)

Fourth. Afterwards, in November, 1879, the St. Louis, Kansas City & Northern Railway Company of Missouri was consolidated with the Wabash Railway Company of Illinois, Indiana and Ohio, and the corporation thus formed took the name of the "Wabash, St. Louis & Pacific Railway Company." (See petition of the United States Trust Company, page 4 of printed record.)

Fifth. Afterwards, on the 17th day of December, 1880, Sidney Dillon, A. L. Hopkins, Albert Keep, Hugh Riddle and Charles E. Perkins organized, under the laws of Iowa, a corporation known as the "Union Elevator Company." Its articles of incorporation provided that its principal place of business should be at the City of Council Bluffs; that its capital stock should be five hundred thousand dollars, and that subscriptions to the capital stock should be paid in when called for by the Board of Directors. (See Articles of Incorporation, page 86 of printed record.)

Sixth. The parties who organized the Union Elevator Company were officers of the different lines of railroad doing business at Council Bluffs, and immediately after its organization the Elevator Company, as party of the *first* part, entered into a written contract with the Union Pacific Railway Company as party of the *second* part; the Wabash, St. Louis & Pacific Railway Company, party of the *third* part; the Chicago, Rock Island & Pacific Railway Company, party of the *fourth* part; the Chicago, Burlington & Quincy Railway Company, party of the *fifth* part; the Chicago & Northwestern Railway Com-

pany, party of the *sixth* part; and the Chicago, Milwaukee & St. Paul Railway Company, party of the *seventh* part, in which each of said railroad companies agreed to subscribe $100,000 to the capital stock of the Elevator Company, and contribute equally thereto, and as an inducement to such subscription the Elevator Company agreed, that in conducting its business it would not discriminate in favor of or against either of said railroad companies, and that it would at all times serve them on equal terms. (See Exhibit A, page 85 of printed record.)

Seventh. The record shows (see testimony of Mr. Wright, page 77 of printed record) that in 1881, each of said railway companies subscribed for an equal amount of stock in the Elevator Company, and that in 1881 and 1882 the elevator was erected at a cost of $280,000, and that when completed (page 79) the elevator was leased by the Elevator Company to certain parties who had afterwards operated it as tenants of the Elevator Company. The record also shows (testimony of Mr. How, page 55, and of Mr. Wright, pages 79 to 81) that the Wabash, St. Louis & Pacific Railway Company had paid the sum of $41,666.66 on account of its said subscription, and that the Elevator Company had made a call on it for a balance of $5,000, which it had failed to pay. The evidence of Mr. Wright (pages 82 and 83 of printed record) further shows that all the other railway companies had paid their subscription in full and had received certificates for their stock in the Elevator Company.

Eighth. In 1884 the Wabash, St. Louis & Pacific Company became insolvent, and on the 29th day of May, 1884, Solon Humphreys and Thomas E. Tutt were, by the Circuit Court of the United States for the Eastern Dis-

trict of Missouri, appointed receivers of *all its property*, including said railroad from Elm Flats, Missouri, to Council Bluffs, Iowa. (See intervening petition, page 44 printed record.)

Ninth. Prior to March, 1886, a bill had been filed in the Circuit Court of the United States for the Southern District of Iowa, Western Division, to foreclose the mortgage of February, 1879, covering said line from Elm Flats to Council Bluffs, and on the 3d day of March, 1886, the Judge of the United States Circuit Court for said Southern District of Iowa, made an order in said cause appointing Thomas McKissock receiver of "all and singular the premises and property described in said mortgage." (See order, page 29 printed record.)

Tenth. The record shows (pages 25, 26) that on the 6th of January, 1886—a date prior to that on which McKissock was appointed receiver—the Circuit Court of the United States for the Eastern District of Missouri had made an order directing Humphreys and Tutt, receivers, to "transfer and surrender to said trustee (the United States Trust Company of New York), or to any person, or receiver appointed at the instance of the Circuit Court of the United States for the Southern District, Western Division of Iowa, the entire line of railroad described and known as the 'Omaha Division' of the Wabash, St. Louis & Pacific Railway Company (meaning the line extending from Elm Flats, Missouri, to Council Bluffs, Iowa), and also all property, real and personal, pertaining to said Division then in their possession and control."

THE PLEADINGS.

On the foregoing facts McKissock filed his intervening petition, praying the Court to make an order directing Humphreys and Tutt to execute and deliver to him a proper assignment of the interest of said Wabash Company or of themselves as such receivers, in said elevator, and that on payment of the sum of five thousand dollars to said Elevator Company, he (McKissock) receive from it a proper certificate for said stock in the Elevator Company.

The defendants answered the petition, and thereupon an order was made referring the case to a Master.

PROCEEDINGS BEFORE THE MASTER.

The cause was referred to F. M. Hunter, Esq., as Special Master, to take testimony and report to the Court his findings of both law and fact. The following facts were agreed upon.

STIPULATION.

1st. It was stipulated (page 84 of printed record) that "Exhibit A" (page 85 of printed record) was a true copy of an agreement entered into between all the stockholders of the Union Elevator Company (being the several railroad companies therein mentioned), preliminary to the incorporation of said Elevator Company.

2d. It was stipulated (same page) that in pursuance of said agreement a corporation was organized under the laws of Iowa, and that the Wabash, St. Louis & Pacific Railway Company subscribed to the stock thereof, *and*

that otherwise than as a stockholder it had no interest in the property of said Union Elevator Company.

3d. It was stipulated that the decree marked "Exhibit B" was a true copy of the decree entered January 6, 1886, in the Circuit Court of the United States for the Eastern District of Missouri; that the interest in the elevator at Council Bluffs (mentioned in the decree on page 15 as being subject to the lien of the general mortgage) is the same property claimed by the petitioner herein.

4th. It was stipulated that the deed of trust mentioned and described in the decree foreclosing the Wabash General Mortgage (on pages 34 and 35 of said decree) is the same deed of trust sought to be foreclosed in this action.

EVIDENCE.

James F. How, witness called by intervenor, testified (page 53) that the Wabash Company subscribed for one-fifth of the stock in the Elevator Company; that it (the Wabash Company) had paid on account of its subscription $41,666.66, and that the Elevator Company had made a demand for a balance of $5,000; that the elevator was leased by the Elevator Company to certain parties to be operated as soon as it was completed, and that since its completion the Wabash Company had used it in the same manner as other railroad companies; that the elevator increased the business of the road, and that this particular elevator gave the Wabash Company a good deal of business it would not otherwise have obtained.

On cross-examination Mr. How stated (page 68) that the $41,666.66 paid by the Wabash Company for the elevator stock came out of the general funds in the treasury of the Wabash Company, and that it was not paid

from the proceeds of the bonds issued on the Omaha Division; that the Elevator Company obtained the ground, built the elevator, and did everything with the understanding that the railway companies would subscribe for the stock; that the elevator was situated (page 69) more than half a mile from the Omaha Division and was reached by the track of another company, and that the elevator in question was of no more advantage to the Omaha Division than it was to other parts of the Wabash system over which the traffic passed.

Charles Keith, witness introduced by intervenor, testified (page 73) that in his opinion an elevator was just as much required by a railroad as a freight house; that an elevator bears the same relation to grain that freight houses do to freight. In his opinion grain could not be handled in any large quantities at any point without an elevator; that the erection of grain elevators was a common and necessary expenditure in order to conduct the grain business of a railroad, and that the city of Council Bluffs was a grain center.

John M. Lane testified (page 75) to substantially the same facts as Mr. Keith.

George F. Wright, another witness introduced by intervenor, testified (page 77) that he knew the Union Elevator at Council Bluffs; that it was owned by the Union Elevator Company of Council Bluffs, a corporation under the laws of Iowa; that he was a member of the Board of Directors, and Secretary and Treasurer of the Elevator Company; that the capital stock was fixed at five hundred thousand dollars, and that the stockholders were the Union Pacific Railway Company; the Chicago & Northwestern Railway Company; the Chicago, Milwau-

kee & St. Paul Railway Company; the Wabash, St. Louis & Pacific Railway Company; the Chicago, Rock Island & Pacific Railway Company, and the Chicago, Burlington & Quincy Railway Company; that each company owned one-sixth of said stock; that the elevator was built in 1881 and 1882 at a cost of $280,000; that while the capital stock of said company was five hundred thousand dollars, it was understood that the stock subscriptions should not exceed the cost of the elevator; that the stock was subscribed for by an agreement in writing, and that it was the understanding of the Board of Directors of the Elevator Company that no stock should be issued until the elevator was completed, and that then no stock should be issued until each stockholder had paid up its share; that the Board of Directors at that time consisted of Marvin Hughitt, of the C. & N. W. Ry. Co.; T. J. Potter, of the C. B. & Q.; R. R. Cable, of the C. R. I. & P.; J. F. Tucker, of the C. M. & St. P.; A. A. Talmage, of the W. St. L. & P.; S. R. Calaway, of the Union Pacific; Thomas L. Kimble, of the C. R. I. & P. and himself. But he (the witness) was not connected in any way with either of the railroad companies; that the elevator was operated by lessees who had a lease dated in 1885, and which continued some four or five years; that from the time of the completion of the elevator to the year 1885 there was a different lessee; that the first lease was a verbal one made with Mr. Kimble, and under it the lessees were to keep the building and machinery insured for one hundred thousand dollars, pay all taxes against the property, complete and perfect a water connection between the elevator and Spoon Lake, keep the machinery and elevator and elevator property in proper repair, and that

the matter of paying any additional rental was to be determined by the amount of business that should be done at the elevator; that the terms were left indefinite on account of the fact that it was a new enterprise; that grain had not, before the building of this elevator, been brought into that channel, and that the lessees claimed that it would be impossible to fix any just or fair rental until they could ascertain, by actual experience, how much grain they could get to come through the elevator, and how much business could be done; that the Executive Committee thought the arrangement as good as could be done under the circumstances; that the rental under the present lease (the one made after September, 1885) was one dollar per car of grain that goes through the elevator, with the guarantee that the number of cars shall not be less than five thousand each year, and that said rental of five thousand dollars per annum was paid quarterly; that at the end of each year there was a settlement, and if more than five thousand cars had gone through, the lessees paid at the rate of one dollar per car, the lessees having nothing to do with caring for the property, as was stipulated in the other lease. Under these two leases the running expenses of the elevator had been paid without drawing on the stockholders, but there had been no excess and the stockholders had received no dividends on their stock; that the understanding was for each railway company to subscribe and pay for one-sixth of the cost of the elevator, which approximated $280,000; that the Wabash had paid all but five or ten thousand dollars; that the subscription of the Wabash, St Louis & Pacific Railway Company to the capital stock was in reality one-sixth of the cost of the

elevator; that its subscription was not fixed in dollars and cents; that it was not expected to have any funds of the company in excess of the cost of the building; that the Wabash Company had paid on account of its subscription $41,666.66, and that the balance due from said company was five thousand dollars; that the object of the elevator was to have a place for storing and transferring grain, and thereby try to divert the grain to this elevator in order that it might be transported to market over said different lines of railroad; that it was built to increase the business of those railroads; that the land on which the elevator stands is owned by the Union Pacific Railway Company, and that the Elevator Company has a lease of the ground for 99 years, at a nominal rental; that the Elevator Company occupies about five acres, and that the building stands on a part of that tract; that such tracks and switches as are deemed necessary for the use of the elevator have been located and are maintained there by the Elevator Company; that they are so arranged that each one of the six companies have ready access to the elevator, which (he thought) was in accordance with the original subscription to the stock; that there was an express stipulation in the original agreement that they were all to be equally interested and served without discrimination; that each of said railroads, excepting the Wabash, had paid in cash the sum of $46,666.66, and that a proper certificate of stock had been issued to each of them excepting the Wabash, and that the certificates run for as many shares of stock, at one hundred dollars each, as would amount to the sums paid.

COMMISSIONER'S REPORT.

The Special Commissioner, to whom the intervening petition was referred to take proofs and report the same, together with his findings both of law and fact, to the Court, found, briefly stated, the following facts (page 49):

First. That on the 15th day of February, 1879, the St. Louis, Kansas City & Northern Railway Company was the owner of a railroad extending in a northwesterly direction from Elm Flats to the boundary line between Missouri and Iowa, *and also lessee, for a term of years*, of a line extending from Council Bluffs in the State of Iowa, in a southerly direction to a point on said boundary line where said railroads were connected and which two roads formed a continuous line from said Elm Flats, Missouri, to Council Bluffs, Iowa, known as the "Omaha Division" of the Wabash, St. Louis & Pacific Railway; that for the purpose of securing certain of its bonds the St. Louis, Kansas City & Northern Railway Company, on the 15th day of February, 1879, executed to the United States Trust Company of New York, a trust deed conveying to said Trust Company all of its right, title and interest in the above described line of railroad, as the same was then or might be thereafter constructed, maintained, operated or acquired, "together with all of the privileges, rights, franchises, real estate, rights of way, depots, depot grounds, side tracks, water tanks, engines, cars and other appurtenances thereunto belonging."

Second. That on the 10th day of November, 1879, the St. Louis, Kansas City & Northern Railway Company was consolidated with the Wabash Railway Company,

thereby forming the "Wabash, St. Louis & Pacific Railway Company."

Third. That in 1881, said Wabash, St. Louis & Pacific Railway Company (successor to the St. Louis Kansas City & Northern Railway Company), together with the Union Pacific Railway Company; the Chicago and Northwestern Railway Company; the Chicago, Milwaukee & St. Paul Railway Company; the Chicago, Rock Island & Pacific Railway Company and the Chicago, Burlington & Quincy Railway Company, erected the elevator in question in the City of Council Bluffs, Iowa.

Fourth. That the elevator was constructed and owned, in form, by a corporation created under the laws of Iowa, known as the "Union Elevator Company;" that said Union Elevator Company was organized by said six railroad companies, and that each of them owned one-sixth of the capital stock thereof.

Fifth. That the capital stock of said Elevator Company was fixed at five hundred thousand dollars, and that the elevator was erected at a cost of $280,000.

Sixth. That the subscriptions to said capital stock by said railroad companies was in reality one-sixth of $280,000, which was the cost of the elevator, and not one-sixth of five hundred thousand dollars, which was its authorized capital stock.

Seventh. He found that the one-sixth interest of the Wabash, St. Louis & Pacific Railway Company amounted to $46,666.66, and that all but five thousand dollars thereof had been paid; that by reason of its failure to pay said last mentioned sum the Wabash, St. Louis & Pacific Railway Company had received no certificate of stock, but that on payment of said amount

it would be entitled to a certificate of stock, representing in amount one-sixth of the capital stock of said Union Elevator Company, and representing a like proportion of said elevator.

Eighth. He found the City of Council Bluffs to be the terminus of said railroad and a large grain center; that said elevator was the only one in said city, *and that it was immediately connected with the main line of the Wabash, St. Louis & Pacific Railway Company.**

Ninth. He found that the Wabash road shipped large quantities of grain out of Council Bluffs over said Omaha Division; that the elevator was erected for the sole purpose of storing and handling grain to be transported over said six railroads, thereby increasing their business, and that the erection of an elevator by the Wabash, St. Louis & Pacific Railway Company at Council Bluffs was necessary to the conduct of its business as a shipper of grain, and that the handling and shipping of grain could not be successfully carried on at Council Bluffs without an elevator.

Tenth. He found that on the 29th day of May, 1884, Humphreys and Tutt were, by the Circuit Court of the United States for the Eastern District of Missouri, appointed receivers of all the property of the Wabash, St. Louis & Pacific Railway Company, including said Omaha Division.

Eleventh. He found that the Wabash, St. Louis & Pacific Railway Company and Humphreys and Tutt, as receivers, had been previously ordered to transfer and

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*There was no evidence to support this finding of the Master. The only evidence offered on the point shows it to be more than half a mile from the "Omaha Division."

surrender to Thomas McKissock, receiver, all the property described in complainant's mortgage (the mortgage made February 15, 1879, by the St. Louis, Kansas City & Northern Railway Company to the United States Trust Company), and that said order had not been complied with.

THE COMMISSIONER'S CONCLUSIONS OF LAW.

Upon the foregoing findings of fact the Master submitted (page 51) the following as his conclusions of law, to wit: "That said elevator was and is a common appurtenance to said railways, and that the sixth interest therein of the Wabash, St. Louis & Pacific Railway Company was and is an appurtenance belonging to its line of railway, and was and is covered and conveyed by complainant's mortgage, and that it forms a part of the mortgage security."

And thereupon he recommended the entry of an order directing the Wabash, St. Louis & Pacific Railway Company and Humphreys and Tutt, receivers, to execute and deliver to McKissock, receiver, a proper assignment *of the interest* of the Wabash, St. Louis & Pacific Railway Company and of said receivers in said elevator.

In his report the Special Commissioner notes the fact (page 52), that it is alleged in the intervening petition that on January 6, 1886, there was entered in the Circuit Court of the United States for the Eastern District of Missouri, a decree establishing the lien of the mortgage of February 15, 1879, as a first incumbrance upon a one-sixth interest in said elevator, which allegation was not denied in the answer.

EXCEPTIONS TO COMMISSIONER'S REPORT.

To the foregoing report the defendants in due time filed the following exceptions:

1st. For that the Master found that said elevator was erected by the several railroads (naming them), whereas he should have found that it was erected by a corporation styled the "Union Elevator Company."

2d. That the Master found that said elevator was immediately connected with the main line of the Wabash, St. Louis & Pacific Railway, whereas it is not so connected.

3d. That the Commissioner erred in finding that the erection and maintenance of an elevator (by the railroad companies) was necessary to the proper conduct of their business as shippers and handlers of grain.

4th. That the Master erred in finding the elevator was a common appurtenance to said railroads, and that a sixth interest therein was an appurtenance belonging to the line covered by complainant's mortgage, and that it formed part of the mortgage security.

FINAL DECREE.

The Court overruled the exceptions (page 130), and thereupon it was ordered, adjudged and decreed as follows:

First. That said report be confirmed.

Second. That the mortgage made to complainant, dated February 15, 1879, and foreclosed in this action, attached to all the interest of the Wabash, St. Louis &

Pacific Railway Company in the Union Elevator at Council Bluffs, Iowa.

Third. That the defendants, Solon Humphreys and Thomas E. Tutt, as receivers of the Wabash, St. Louis & Pacific Railway Company, should within ten days execute and deliver to Thomas McKissock, as receiver of the Omaha Division, a proper assignment of all the interest of said Wabash, St. Louis and Pacific Railway Company, or of themselves as receivers, in said Union Elevator.

Fourth. That upon receipt of said assignment and the issue to petitioner of a proper certificate of stock in said Elevator Company to the amount of $46,666.66, the petitioner (McKissock) pay out of any funds in his hands, as receiver, to said Union Elevator Company the sum of five thousand dollars.

Fifth. That said Humphreys and Tutt, out of any funds in their hands as such receivers, pay all the costs of this proceeding.

From the foregoing decree appeals were duly prosecuted to this Court. (Printed record pages 131 and 133).

ASSIGNMENT OF ERRORS.

1st. The Court erred in holding that the bondholders of the Omaha Division had an *equitable interest* in the elevator property, because it was not shown that they had any legal or equitable interest in the money with which the elevator was erected.

2d. The Court erred in holding that the mortgage in question was a lien on any interest owned by the Wabash Company in the elevator, and in directing Hum-

phreys and Tutt to assign such interest to McKissock, receiver, because the record shows that the Wabash Railway Company never had any interest in the elevator property.

3d. The Court erred in confirming the Master's report which held as a matter of law that the elevator was a common appurtenance to the railroads of the several companies owning the elevator stock.

4th. The Court erred in holding that the elevator was a part of the mortgaged railroad, because the uncontradicted testimony shows, that it was situated on leased ground more than half a mile from the terminus of the Omaha Division, and only reached over the tracks of another company.

5th. There is no merit in the suggestion, that the rights of these parties to the elevator stock were adjudicated in the suit foreclosing the Wabash General Mortgage.

BRIEF.

From the statement of the case it will be observed that when this controversy arose, Humphreys and Tutt had been appointed receivers of all the property of the Wabash, St. Louis & Pacific Railway Company, by the Circuit Court of the United States for the Eastern District of Missouri, and that Thomas McKissock had been appointed receiver of all and singular the premises and property described in the mortgages made to the United States Trust Company by the St. Louis, Kansas City & Northern Railway Company on February 15, 1879; and furthermore, it appears that Humphreys and Tutt had been ordered by the Court appointing them, to transfer and surrender to McKissock all property, real and personal, covered by said mortgage to the United States Trust Company.

Such being the situation, it was asserted by McKissock that the mortgage under which he had been appointed receiver, included the stock subscribed for and held by the Wabash, St. Louis & Pacific Railway Company in the Union Elevator Company at Council Bluffs, and accordingly he demanded that said stock should be transferred to him under said order. But the claim made by McKissock to the elevator stock was denied by Humphreys and Tutt, and in the interest of the general creditors of the Wabash Company they refused to transfer to McKissock said stock, or any interest in the elevator.

I.

The bondholders of the Omaha Division had no equitable interest in the elevator property, because they had no legal or equitable interest in the money with which the elevator was erected.

If the bondholders of the Omaha Division had any equitable lien on the elevator, or any lien on the stock of the Wabash Railroad in the Elevator Company, their rights must grow out of some legal or equitable interest they had in the money invested in the elevator stock, or which was used to build the elevator. If that money belonged to the bondholders of that particular division, or if it was covered by their mortgage, then a trust might exist in their favor, or some equitable rights might have sprung up in their behalf. It is clear, however, that the bondholders of that particular division had no interest in the money that was paid by the Wabash Company for the elevator stock, because the evidence shows that the money was all taken out of the general funds in the treasury of the Wabash Company.

The only witness who testified on that point was Mr. How, and his evidence (page 68) was as follows:

Ques. From what source did this $41,666.66 come, that was paid by the Wabash Company for this stock? Ans. From the treasury of the Wabash Company.

Ques. From the general funds? Ans. Yes, sir, from the general funds.

Let us suppose that instead of subscribing for the elevator stock, the Wabash Railway Company had in 1881 and 1882 purchased United States securities, or real estate in St. Louis, with money taken out of its general treasury,

would the bondholders of the Omaha Division have had, by virtue of their mortgage, an equitable lien upon the real estate or securities so purchased? On what legal or equitable principle can it be said that their rights in such property would be superior to the rights of the *general creditors* of the insolvent railway corporation?

This is not a contest in which a debtor is seeking to place his property beyond the reach of his creditors. It is a contest in which the receivers, as representatives of *all the creditors* of the Wabash Company, deny the right *of a certain class of secured creditors* to take property not pledged to them. In the property not covered by specific mortgages, all general creditors have the same right, and as to them equality is equity. It must be remembered that the holders of these particular bonds do not constitute *all the creditors* of the Wabash Company. They constitute *only one class or set* of its creditors, and in this contest they are only entitled to what is covered by their mortgage.

The sole object of this proceeding is to ascertain what property is covered by the mortgage in question, for as to all else, they only rank as common creditors. There is nothing in the petition, the evidence, or Master's report which is even suggestive of fraud, and there is therefore no reason why this transaction with the Elevator Company should be regarded with suspicion, or construed differently by the Court from what it was construed by the parties. That it was the intention of the railroad companies to organize a corporation in which they were to be interested only as stockholders, is beyond question. Their purpose was lawful, and as to the Wabash Company it is shown by the evidence that the grain

gathered at the elevator was sent out over all the lines of its system. The elevator was not local to that particular division, and hence there seems to be no equitable reason why this stock should be given to the holders of these bonds, unless it can be shown that the stock comes within the letter of their mortgage.

It was alleged in the petition (page 43 of record) that the Wabash Company paid for the elevator stock *out of funds realized from the sale of the Omaha Division bonds,* but no proof was offered in support of that averment, while, on the contrary, Mr. How, a witness called by intervenor, testified (page 69) that none of the money realized from the sale of the Omaha Division bonds was applied in that direction; and that, in fact, not enough was realized from the sale of those bonds to build the road.

But even if the elevator stock had been purchased out of funds realized from the sale of Omaha Division bonds, that fact would not have created any trust in their behalf, or given them an equitable interest in the stock so purchased. The money realized from the sale of the bonds belonged to the railway company, and property purchased with that money was not impressed with any trust.

In *Van Weel vs. Winston* (115 U. S. 228), it was charged by bondholders, that Mr. Winston, one of the trustees in a railroad mortgage, had converted moneys realized from the sale of certain bonds issued by the railroad company to his own use, and in disposing of the contention that bondholders had an interest in the disposition to be made of moneys received upon the sale of such securities, the Court said:

"The answer to this is, that Mr. Winston came under no obligation to see to the application of this money as the bondholders might think it ought to be applied. They had bought their bonds, paid their money, and received their security. The money so diverted was the money of the Southwestern Company, and not their money.

"The wrong done by Winston in that matter, if wrong there was, was done to that company, and not to the bondholders. They had provided their own means of insuring the building of this branch road, by disbursing the money through the Rock Island Company, and it was successful. The road was built. There was no privity between Mr. Winston and these bondholders as to his use of money which they had loaned to the company, which was no longer their money. The error which pervades the bill throughout is to treat this corporation, to which the bondholders loaned their money, as if it had no existence, as if they had loaned it to Mr. Winston and held his personal obligation that it should all be honestly applied, and be responsible for the repayment of the loan. If Mr. Winston cheated this company out of its money, the right to redress for that wrong is in the company or in its stockholders."

II.

The Court erred in holding that the mortgage in question was a lien on an interest owned by the Wabash Company in the elevator, and in directing Humphreys and Tutt to assign such interest to McKissock, receiver, because the record shows that the Wabash Railway Company had no interest in the elevator property.

It was shown by the proofs, it was found by the Master, *and it was stipulated by the parties as a fact in*

the case, that the Wabash, St. Louis & Pacific Railway Company had no interest in the elevator property otherwise than as a stockholder in the Union Elevator Company.

It was also shown by the proof and found as a fact by the Master, that the elevator was erected and owned by the Union Elevator Company, a corporation formed under the laws of Iowa. The appellants therefore contend, that there never was a time when a deed or mortgage executed by the Wabash Company as grantor, even if it had specifically described the elevator, would have passed any interest in it, or have cast a cloud upon the title of the Elevator Company to its property. One cannot grant what he hath not, and therefore it is difficult to see how these parties can hope to maintain their claim to property owned by the Elevator Company through a mortgage made by the railroad company.

This case has proceeded from the outset upon the assumption that the several stockholders in the Elevator Company owned the elevator; or, in other words, the idea has been that the companies owning the stock were tenants in common of the elevator property. But appellants have contended, and they still contend, that as stockholders in the Elevator Company the railway companies had no legal interest in the elevator which they could transfer by deed or mortgage. Stockholders may transfer or pledge their stock, but as stockholders they cannot pledge or transfer the corporate property. Therefore, a deed or mortgage executed by all the stockholders of a company would not operate as a transfer of any interest in the corporate estate.

If that proposition be true, then it is clear that these

bondholders can claim no interest in the elevator under their mortgage, because their mortgage was executed by one who was only a stockholder in the corporation that owned the elevator property.

The case of the *Pullman Car Co. vs. Missouri Pacific Co.* (115 U. S. 587) is one which illustrates the principle for which we contend. In that case there was a contract under which the Pullman Company was authorized to run its cars over all lines which the Missouri Pacific Company *then controlled or might thereafter control by ownership, lease or otherwise.*

The Missouri Pacific Company afterwards acquired a large majority of the stock of the St. Louis, Iron Mountain & Southern Railway Company, and as a stockholder it had control of the Iron Mountain Railroad, and the Pullman Company thereupon claimed the right to run its cars over that line. In discussing the relationship which existed between the two, by reason of one company owning the stock of the other, the Court said:

"The Missouri Pacific Company has bought the stock of the St. Louis, Iron Mountain & Southern Company, and has effected a satisfactory election of directors, but this is all. It has all the advantages of a control of the road, but that is not in law the control itself. Practically it may control the company, but the company alone controls its road. In a sense, the stockholders of a corporation owns its property, but they are not the managers of its business or in the immediate control of its affairs. Ordinarily they elect the governing body of the corporation, and that body controls its property. Such is the case here. The Missouri Pacific Company owns enough of the stock of the St. Louis, Iron Mountain & Southern to control the election of directors, and this it has done. The directors now control the road through

their own agents and executive officers, and these agents and officers are in no way under the direction of the Missouri Pacific Company. If they or the directors act contrary to the wishes of the Missouri Pacific Company, that company has no power to prevent it, except by the election, at the proper time and in the proper way, of other directors, or by some judicial proceeding for the protection of its interest as a stockholder. Its rights and its powers are those of a stockholder only. It is not the corporation, in the sense of that term as applied to the management of the corporate business or the control of the corporate property."

The relations which stockholders occupy towards corporate rights and property in matters of this kind was defined by Chief Justice Shaw in *Smith vs. Hurd* (12th Met. 385), as follows:

"The individual members of a corporation, whether they should all join, or each act severally, have no right or power to intermeddle with the property or concerns of the bank, or call any officer, agent or servant to account, or discharge them from any liability. Should all the stockholders join in a power of attorney to any one, he could not take possession of any real or personal estate, any security or chose in action; could not collect a debt, or discharge a claim, or release damage arising from any default; simply because they are not the legal owners of the property, and damage done to such property is not an injury to them. Their rights and their powers are limited and well defined. They are members of an organized body, and exercise such powers as the organization of the institution gives them. Stockholders in banks have a separate right to dividends, when declared, and to a distributive share of the capital stock, if any remains when the charter of the bank is at an end, and its debts paid." See also:

Plimpton vs. Bigelow, 93 N. Y. 592.
Burrill vs. Bushwick R. R. Co., 75 N. Y. 211.
Field vs Pierce, 102 Mass. 261.
Fisher vs. Essex Bank, 5 Gray, 373.

III.

The Court erred in confirming the Master's report, which held as a matter of law that the elevator was a common appurtenance to the railroads of the several companies owning the elevator stock.

If the Wabash Company had no interest in the elevator property, excepting as a stockholder in the Elevator Company, then the decree was clearly erroneous, unless it can be said *that a certificate of stock in a collateral corporation is an appurtenance to a railroad.* If stock in an elevator can be considered as an appurtenance to a railroad, then the same rule would apply to stock in a bank or stock in any other corporation with which the railroad company might do business.

But if it were conceded that these shares of stock were appurtenant to the railroad, then why were they not appurtenant to *all the railroads of the Wabash Company?* On what principle can it be said that the shares were appurtenant *to the particular division on which this mortgage rested?* But it cannot be necessary to pursue this inquiry further in order to show *that these shares of stock* did not pass to this trustee as an appurtenance to the mortgaged railroad.

But let it be assumed that the Wabash Company had some legal interest in the elevator property (aside from its stock) which it could mortgage or sell, then the question is, as to whether, *on the facts in this case*, such interest passed to this trustee as an appurtenance to this line. We concede that the mortgage in question covered the railroad to Council Bluffs *and its*

appurtenances, but the record shows that the elevator is located half a mile or more beyond the terminus of the railroad at Council Bluffs, and that it is located on a lot that can only be reached over the tracks of another company. On those facts it seems clear that even if the railway company had an interest in the elevator aside from its interest as a stockholder, that such interest did not pass, because *lands cannot be appurtenant to other lands.*

In *Woodhull vs Rosenthal* (61 N. Y. 390), the Court said:

"A thing 'appurtenant' is defined to be a thing used with and related or dependent upon another thing more worthy, and agreeing in its nature and quality with the thing whereunto it is appendant or appurtenant. It results from this definition that land can never be appurtenant to other land, or pass with it as belonging to it. All that can be reasonably claimed is, that the word 'appurtenance' will carry with it *easements and servitudes* used and enjoyed with the lands for whose benefit they were created. Even an easement will not pass, unless it is necessary to the enjoyment of the thing granted."

Washburn on Real Property, 667, Sec. 32.
Bouvier L. Dict. vol. 1, page 136.
Bank of Tennessee, 104 U. S. 493.

The authorities on this question are collected in *Jones on R. R. Securities*, *Sec. 104*, where it is said, that under a mortgage conveying a railroad with its corporate privileges *and appurtenances*, only such property passes as is directly appurtenant to the road and is indispensably necessary to the enjoyment of its franchises.

In this case the Wabash Company only used the ele-

vator as it would use any other public or private warehouse or factory reached by its side tracks or switches. It sent its cars to the elevator for freight, and that is the only use that was made of it. The railroad company had no control over the elevator. The evidence shows, the elevator property was from the time of its completion in the possession of and managed by parties who held under a lease from the Elevator Company. On that point Mr. Wright, a witness examined by intervenor, testified (page 79 of record) as follows:

Ques. How are the expenses of the elevator paid? Ans. The elevator is now operated by lessees, who have a lease continuing some four years yet before its expiration.

Ques. When was that lease entered into? Ans. It was entered into a year ago last September I think; about September 1st, 1885, is my recollection.

Ques. Was it leased between the time of its building and the time of entering into of the lease you have just named? Ans. Yes; there was a different lessee operated it from the time of its completion up to Sept. 1st, 1885.

The foregoing testimony shows very clearly that the elevator was at all times under an independent management, as well as an independent ownership, and that it was only used by the railroad companies as they would use any other warehouse or factory to which they sent their cars for freight; and hence the elevator was not in any legal sense appurtenant to the several lines of railroad, and the decree affirming the report of the Master on that point was clearly erroneous.

IV.

The elevator was no part of the railroad, because the uncontradicted testimony shows, that it was situated on leased ground more than half a mile from the terminus of the Omaha Division, and only reached by passing over the tracks of another company.

If the elevator had been erected by the Wabash Company on the right of way of the Omaha Division (such right of way being covered by the mortgage), then it might be contended with great force that it belonged to that division, either as an appurtenance or as a part of the property mortgaged. But such is not this case. It is true that the Master found, without a single syllable of testimony in the record to sustain his finding, that the elevator in question was *immediately connected with the main line of the Wabash, St. Louis & Pacific Railway.* To that finding the appellants excepted, and the uncontradicted testimony in the case shows, that instead of being immediately connected with said main line, the elevator was actually situated more than half a mile away, on ground owned by the Union Pacific Railway Company and leased for ninety-nine years to the Union Elevator Company (not to the Wabash Railway Company), and that the elevator is only reached by passing over the tracks of another company.

On those points the only testimony found in the record is that given by Mr. How and Mr. Wright. Mr. How states (page 69) as follows:

Ques. How far from the terminus at Council Bluffs of the Omaha Division is this elevator located? Ans. Some little distance. I cannot give the exact distance. I can

furnish the necessary distance if you want it. I will attach it to my deposition, as a part of my answer. It is more than half a mile from the Omaha Division, and is reached by the track of another road.

And the testimony of Mr. Wright on that point (page 82) is as follows:

Ques. Who owns the land on which the building stands? Ans. The Union Pacific Railway Company.

Ques. What interest in it had the Elevator Company? Ans. It had a lease I think for 99 years, at a nominal rental. * * *

Ques. About how much land is there so occupied by the Elevator Company, do you know? Ans. My impression is, there is about five acres.

Ques. The building stands on some part of that? Ans. Yes.

Ques. What facilities has the Elevator Company afforded the other railroads for the use of the elevator, by way of trackage or otherwise? Ans. Tracks and switches, such as are deemed necessary for the use of the elevator, have been located and are maintained there.

Ques. By the Elevator Company? Ans. Yes.

This testimony shows that the Elevator Company is an independent corporation which owns and maintains an elevator with tracks and other facilities for the accommodation of all railroads; this independent corporation has, under the law of its creation, certain public duties to discharge, wholly differing in kind from those imposed upon a railroad company, and yet it was found and decreed by the Court below that the property of that corporation passed as a security for the bonds of the railroad company, not under a mortgage executed by the corporation owning the elevator, but under a mortgage executed by the Wabash Railroad Company, and it is to reverse that decree that this appeal is prosecuted.

V.

There is no merit in the suggestion, that the rights of these parties to the elevator stock were adjudicated in the suit foreclosing the Wabash General Mortgage.

The decree foreclosing the General Mortgage was the foreclosure of a junior mortgage, *subject to the lien of certain senior mortgages*, but there was no attempt to settle in that decree the rights of any senior or divisional mortgagee. It is *not averred in the petition* that any of the parties to this suit were parties to the decree foreclosing the General Mortgage, and hence what was stated in the petition, with respect to that decree, was wholly immaterial and needed no denial.

But when we go to the decree itself we find nothing to justify the averment, that it was in that case adjudicated that a one-sixth interest in said elevator was subject to the lien of said General Mortgage, but subject nevertheless to the prior lien of the mortgage of February 15, 1879, to the United States Trust Company. It is true that in the decree foreclosing the General Mortgage (page 98 printed record), we find the Wabash General Mortgage declared to be a lien on the interest of the Wabash Company in the elevator at Council Bluffs, and that interest was ordered sold, together with all the other property covered by said General Mortgage, *without affecting the lien of some thirty other contracts, leases and senior divisional mortgages, but there was no attempt to adjudicate concerning the specific property covered by any one of the senior divisional mortgages there mentioned.*

The sole object of the decree foreclosing the General Mortgage was to have a sale of the property covered by that mortgage without in any manner affecting the rights of other mortgage creditors. On that point the language of the decree foreclosing the General Mortgage (page 104) is as follows:

"It is further ordered and adjudged that this decree, or any sale made thereunder, shall not in any way prejudice or affect the rights of parties to, or persons interested in certain mortgages, deeds of trust, leases and contracts hereinafter set forth, but all the rights of such persons and parties are hereby reserved to them. The deeds of trust, mortgages, leases and contracts, in regard to which such reservation is made, are as follows."

That recital in the decree is followed by a long list of mortgages, leases and contracts, and among them, on page 108, there is found a reference to this mortgage of February 15, 1879.

Certainly there is nothing in that decree to justify a contention that the rights of these parties to this property was there adjudicated. For the errors complained of the decree of the Circuit Court ought to be reversed with costs.

WELLS H. BLODGETT,
Solicitor for Appellants.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

SOLON HUMPHREYS AND THOMAS E. TUTT, RECEIVERS OF THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY; AND JAMES F. JOY, THOMAS H. HUBBAR D, EDGAR T. WELLES AND O. D. ASHLEY, PURCHASING COMMITTEE,
Appellants,
against
THOMAS McKISSOCK, RECEIVER, &c.,
Appellee.
No. 296.

THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY,
Appellant,
against
THOMAS McKISSOCK, RECEIVER, &c.,
Appellee.
No. 1403.

BRIEF AND ARGUMENT FOR THE APPELLEE.

EDWARD W. SHELDON,
THEODORE SHELDON,
Of Counsel.

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THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY, *Appellant,* *against* THOMAS McKISSOCK, Receiver, &c., *Appellee.*	No. 1403.

BRIEF AND ARGUMENT FOR THE APPELLEE.

EDWARD W. SHELDON,
THEODORE SHELDON,
Of Counsel.

C. G. Burgoyne, 146-150 Centre Street, New York.

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OCTOBER TERM, 1890.

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THE WABASH, ST. LOUIS and PACIFIC RAILWAY COMPANY, Appellant, AGAINST THOMAS MCKISSOCK, Receiver, &c., Appellee.	No. 1403.

BRIEF AND ARGUMENT FOR THE APPELLEE.

Statement.

These are separate appeals from a decree of the Circuit Court of the United States for the Southern District of Iowa,

Western Division, entered October 6th, 1887, in the foreclosure action of the United States Trust Company of New York, against the Wabash, St. Louis and Pacific Railway Company and others, upon the intervention of Thomas McKissock, the receiver of the mortgaged premises, previously appointed in that suit.

The petition of intervention was filed October 11th, 1886, for the recovery of the one-sixth interest of the Wabash company in a grain elevator at Council Bluffs, Iowa, upon the ground that it was a part of the mortgaged property committed to the petitioner's custody (Rec., p. 43).

On February 15, 1879, the St. Louis, Kansas City and Northern Railway Company, to secure its Omaha Division bonds, to the amount of $2,350,000, executed to the United States Trust Company of New York, as trustee for the holders of those bonds, a mortgage covering its line of railway extending from Council Bluffs, Iowa, 145 miles, in a southwesterly direction, to Pattonsburg, Missouri. This property was known as the Council Bluffs and St. Louis Railway, and subsequently as the "Omaha Division" of the Wabash, St. Louis and Pacific Railway. The mortgage conveyed to the Trust Company "its "successor, successors and assigns in this trust forever, all and "every part and parcel of the continuous line of railroad "aforesaid, and all right, title and interest therein as now "owned, leased and held by the said St. Louis, Kansas City "and Northern Railway Company, commencing at said Elm "Flats, near Pattonsburg, in the State of Missouri, and extending through the Counties of Daviess, Gentry, Nodaway and "Atchison, in said State of Missouri, and through the Counties "of Page, Fremont, Mills and Pottawattamie, in the State of "Iowa, to the City of Council Bluffs, in said State, as said railroad now is, or may be hereafter, constructed, maintained, "operated or acquired, together with all the privileges, rights, "franchises, real estate, right of way, depots, depot grounds, "side-tracks, water tanks, engines, cars and other appurtenances thereunto belonging" (Rec., p. 13).

November 10, 1879, the mortgagor consolidated with the

Wabash Railway Company under the laws of the State of Missouri, and was thereafter known as the Wabash, St. Louis and Pacific Railway Company. By the express terms of the consolidation, the new company entered upon the possession of all the property, and assumed all the liabilities and obligations of both the companies thus consolidated, including these Omaha Division bonds (Rec., p. 34).

In the year 1881, there were six trunk lines of railway centering in the City of Council Bluffs; the Wabash, St. Louis and Pacific Railway Company, the Union Pacific Railway Company, the Chicago and Northwestern Railway Company, the Chicago, Milwaukee and St. Paul Railway Company, the Chicago, Rock Island and Pacific Railway Company, and the Chicago, Burlington and Quincy Railroad Company. All were carriers of grain in large quantities. Although Council Bluffs was the terminus of these and other roads, and was a grain centre, it then had no elevator. For the purpose of erecting and operating at that point a grain elevator which should be sufficiently large to meet the traffic wants of all of these lines, the six companies entered into an agreement, whereby an elevator was to be built and operated at their joint expense (Rec., p. 78). In order to carry the agreement into effect, a corporation known as the Union Elevator Company was at the same time organized under the general law of Iowa (Rec., p. 86). Its capital stock of $500,000 was subscribed for in equal amounts by the six railway companies. A tract of five acres of land was secured from the Union Pacific Railway on a ninety-nine years lease, at a nominal rental, and an elevator built thereon at a cost of $280,000 (Rec., pp. 77, 78). Soon after its completion, the elevator was leased from year to year to individuals, no rental being reserved, but the lessee being allowed to charge against each shipment of grain passing through the elevator a small sum, sufficient only to pay the expenses of operation (Rec., p. 79). The sole purposes for which the elevator was erected, and the sole purposes to which it has ever been used, are the storage and handling of grain shipped over the lines, and in the possession of, some one of the six

railway companies. In every material respect the Union elevator is, and always has been, a mere freight depot for grain, and operated in every essential respect as other depots are operated, when owned and used in common by two or more railway companies. No rentals have been reserved under any of the leases of the elevator, and no dividends have been declared, or are expected to be declared, upon the stock (Rec., p. 80). Each of the railway companies bound itself only to contribute its equal share of the original cost of building, and its equal share thereafter of any deficit in operating expenses.

The erection of this elevator was warranted by the grain traffic over the six roads. The transportation of grain over the Wabash line and other roads was very largely increased thereby. The elevator, ever since its erection, has been indispensable to the Wabash company in the transportation of grain over its lines, and to that extent the elevator has added to the value of the Omaha Division. The shipments of grain through this elevator have, since its erection, constituted a very large part of the business of the division, and if deprived of the use of the elevator, this grain traffic would practically cease (Rec., p. 64).

The written agreement under which the six companies subscribed to the stock of the elevator company, is, omitting the formal parts, as follows:

"Witnesseth that, whereas, the parties of the second, third, "fourth, fifth, sixth and seventh parts" (the said six railroad companies) "have severally agreed to contribute equally to the "capital stock of the party of the first part" (the Union Elevator Company), "and have each subscribed $100,000 thereto, "to be paid equally in installments as called for."

"Now, as part of the consideration and inducement to such "subscriptions, it is agreed by the party of the first part, sever- "ally to and with each of the parties of the second, third, fourth, "fifth, sixth and seventh parts, that the said party of the first "part will not, in the conduct of its business, at any time dis- "criminate in favor of or against either of the said parties of "the second, third, fourth, fifth, sixth and seventh parts in any "respect whatsoever; and the party of the first part further

" agrees severally with each of the said other parties hereto, " that it will at all times do elevator service for each of said " companies on equal terms and conditions, affording, to the " full extent of its capacity, to each and all, equal advantages " and facilities " (Rec., p. 85).

Under the foregoing contract, the Wabash company paid to the elevator company as its share of the cost of erecting and maintaining the elevator, all assessments upon its subscription, amounting to the sum of $41,666.66. After the appointment of the Wabash receivers, an additional assessment of $5,000 was levied. Each of the six companies paid this last assessment, except the Wabash company, which, together with its receivers, defaulted. By reason of such default, no certificate of stock of the elevator company was issued to the Wabash company or its receivers (Rec., p. 81).

The elevator was so used by the Wabash company, in common with the other five railway companies, until May 29, 1884, when in a suit in the Circuit Court of the United States for the Eastern District of Missouri, for the foreclosure of the "general mortgage" (a mortgage subsequent in point of time and equity to that of the Omaha Division), Solon Humphreys and Thomas E. Tutt, appellants herein, were appointed receivers, and entered into possession of all the property of the Wabash, St. Louis and Pacific Railway Company, including the Omaha Division, and its interest in the elevator in question. As such receivers, they used the elevator in the same manner and for the same railroad purposes as it has been used by the Wabash company and received therefrom like benefits.

On March 1, 1886, Thomas McKissock, the appellee, was appointed receiver of all the property described in the mortgage to the United States Trust Company, and by the same order, the appellants Solon Humphreys and Thomas E. Tutt, receivers as aforesaid, were ordered to surrender to the appellee all of such property. These appellants, however, having refused to assign their interest in the elevator, claiming that it was not conveyed by the mortgage to that Trust Company, an

intervening petition was filed by receiver McKissock to compel such transfer (Rec., pp. 43, 48).

Prior to the filing of this petition, the receiver tendered to the Union Elevator Company, the sum of $5,000, being the amount of the unpaid assessment upon the subscription of the Wabash company, and requested the elevator company to issue to him a certificate of stock or ownership in the said elevator similar to the certificates heretofore issued to each of the other five railway companies; but the elevator company refused to do so until the petitioner obtained a proper assignment of their interest from the Wabash receivers (Rec., p. 81).

The Special Commissioner to whom the petition was referred, in his report found the facts involved to be substantially as set forth above, and further that the right, title and interest of the Wabash company in the elevator was subject to the lien of the Omaha Division mortgage, and that the Wabash receivers should be ordered to execute and deliver to the petitioning receiver, a proper assignment of their interest and the interest of the Wabash company in this elevator.

The cause was argued before Judges LOVE and SHIRAS, upon exceptions filed by the appellants to the Special Commissioner's report, at the March Term, 1887. These exceptions were overruled, and the decree upon which the present appeal is based, was entered, October 6th, 1887.

FIRST POINT.

Grain elevators of the kind involved in this controversy, are legitimate railway purposes.

I. That the acquisition and use of grain elevators by railway companies for storing and handling grain to be carried over their lines, are within the corporate powers of such companies, recent decisions leave no room for doubt.

In the language of ALLEN, J., in N. Y. & H. R. R. Co. vs. Kip *et al.*, 46 N. Y., 552: "Passenger depots, convenient and "proper places for the storing and keeping cars and locomotives "when not in use, proper, secure and convenient places, "having reference to the public interests to be subserved, for "the receipt and delivery of freight, and for the safe and "secure keeping of property between the time of its receipt "and dispatch, or after its arrival and discharge, and before "its removal by the owner or consignee, are among the ac-"knowledged necessities for the running and operating the "railroad, to the proper prosecution of the business in the "interests of the public. They may be regarded as indispensa-"ble to the accomplishment of the general purposes of the "corporation and the design of the legislative grant."

Or as it is expressed by Mr. Morawetz in his text-book on the subject:

"Railroad companies have implied authority to build docks, "elevators, and warehouses for the storage of property trans-"ported or to be transported on their roads."

The Law of Private Corporations (2d Ed.), Sec. 368, and cases cited.

Illinois Central Railroad Company vs. Wathen, 17 Brad., 582.

1 Wood on Railroads, 479.

The application of this principle has been unvarying.

(a) It sanctions the exercise of the right of eminent domain for the acquisition of land for elevators.

In considering such an application, the Court of Appeals of New York said:

"A careful examination of the various objections urged by "the appellants leads to the conclusion that the objects for "which the petitioners seek to acquire the land in question, "are entirely proper and lawful, and within the scope of the "grant of power which authorizes the taking of land for rail-"road purposes. The only limit to the power in such cases is "the reasonable necessity of the corporation in the discharge of "its duty to the public. This necessity includes the acqui-

" sition of land and accommodations for all depots and build-
" ings, convenient and proper for the storing and keeping of
" its cars and locomotives when not used; for the receipt, de-
" livery, storing and safe keeping of freight and property, as
" well as such facilities as are usually required in operating
" the road; the successful prosecution of its business; the
" general purposes of the corporation, and the design in con-
" templation by the legislative grant."

Matter of New York Central and Hudson River Railroad Company, 77 N. Y., 248, 263.

A similar conclusion was reached in the earlier case, entitled *In re* New York Central and Hudson River Railroad Company vs. Metropolitan Gas Light Company, 63 N. Y., 323; while in the Matter of the Staten Island Rapid Transit Railroad Company, 103 N. Y., 251, 258, the right to condemn for prospective as well as for present uses was upheld, provided the necessity of such uses in the immediate future, was established beyond a reasonable doubt.

As expressed by the Supreme Court of Mississippi, the only limitation is that "the future acquisitions be such as " belong naturally to the business of constructing and main-
" taining the road, and to its primary end as a common carrier
" of passengers and freight."

Mississippi Valley Railroad Company vs. Chicago, &c., Railroad Company.
2 Am. & Eng. R. R. Cases, 414, s. c., 58 Miss., 846.

(b) It exempts the elevators themselves and the land upon which they are built from taxation.

The Supreme Court of New Jersey justified such a conclusion in the following language:

" It appears in the evidence that the elevator is used for
" transhipping grain and relieving cars of their lading. The
" elevator does by machinery what was before done by hand,
" and appears to be one of the necessary terminal facilities of

" a railroad engaged in the transportation of large quantities of " grain " (VAN SYCKEL, J.).

The State, The Pennsylvania Railroad Company, Prosecutor, vs. The Mayor and Aldermen of Jersey City, 49 N. J. Law, 540.

And the Supreme Court of Illinois, in reaching a different result by the same reasoning, said :

" If the elevator was used exclusively by the company in " receiving grain for shipment, or for storing it after ship- " ment, without any additional charge therefor, except where " the owner neglected to take it away within a reasonable " time after its arrival, the property would then be clearly " exempt from taxation ; but such is not the case."

People *ex rel.*, &c., vs. Illinois Central R. R. Co. 24 Am. & Eng. R. R. Cases, 494, s. c., 119 Ill., 137.

It is true that a stricter interpretation of statutes of exemption from taxation has prevailed in Pennsylvania, based upon the supposed distinction between property which enters into the physical construction of a railway, and that which is used only as a means, though necessary, for carrying on its business. This distinction, however, seems hardly to have the substance to commend itself to our practical judgment.

All of these decisions, it will be observed, recognize the principle that statutes delegating the right of eminent domain to railroad and other corporations for public use, being in derogation of common right, as well as statutes exempting favored classes of property from taxation, are not to be extended by implication, beyond their strict terms.

On the other hand, as regards eminent domain, the fact must not be overlooked that this delegated power is far from commensurate with the corporation's right of taking property by purchase. As a purchaser, a railway company may acquire land for many purposes not within the scope of condemnation proceedings, such for example, as for detached ticket offices, employees' dwellings and car manufacturing shops.

II. Regarding the present case in the light of these adjudications, it would seem to be a necessary sequence that the interest of the Wabash Railway Company in the Union Elevator was acquired and used for railroad purposes. It is not disputed that the elevator in question was erected, and has ever since been exclusively used by its owners, the six railway companies and their successors, for the sole purpose of storing and transhipping grain carried over these companies' lines. They alone have made use of its facilities, and the witnesses are unanimous that the erection and maintenance of the elevator were indispensable to the conduct of the companies' grain traffic.

SECOND POINT.

The interest of the Wabash Company in the elevator in question, was embraced in the mortgage of the "Omaha Division."

The conveyance was of the railroad and "all right, title "and interest therein, as" then "owned, leased and held," and "as said railroad" then "was or" might "be thereafter "constructed, maintained, operated or acquired, together with "all the privileges, rights, franchises, real estate, right of "way, depots, depot grounds, side-tracks, water-tanks, en-"gines, cars and other appurtenances thereunto belonging." (Rec., p. 13).

The clear language relative to future acquisitions renders immaterial the fact that the property in question was acquired subsequent to the execution of the mortgage.

Pennock vs. Coe, 23 How., 117.
Shaw vs. Bill, 95 U. S., 10.
Thompson vs. Valley Railroad Company, 132 U. S., 68, 73.
Central Trust Company vs. Kneeland, 138 U. S., 414.

For the same reason, it is, perhaps, unnecessary to invoke the equitable rule that equivocal or ambiguous language in a mortgage is to construed against the mortgagor, and in such a manner as to make the instrument a valid security for the mortgagee.

Jones on Mortgages, 4th Ed., § 101.

The simple question then remains: Was this grain freight depot, acquired and used as it was for railroad purposes, within the granting clause of the mortgage? That it was, follows, we believe, by necessary implication, from the language employed. We will call specific attention to a few phrases.

(a) The grant of the "railroad," constructed or to be constructed, was of itself sufficient.

This proposition rests upon the doctrine of accession, by which property incidental to the railroad as such, attaches to that unit as it develops, and follows a grant of it.

See, for example,

Pierce vs. Emery, 32 New Hampshire, 484.
Phillips vs. Winslow, 18 B. Mon (Ky.), 431.
Philadelphia, Wilmington and Baltimore Railroad Company vs. Woelpper, 64 Penn. St., 366.
1 Rorer on Railroads, 243.

(b) "All right, title and interest therein as now owned, "leased and held," &c.

(c) All "privileges, rights, franchises."

What that phrase includes is thus stated by Mr. Justice HARLAN:

"The rights, privileges, and franchises mortgaged were, it "seems to us, only such as had direct connection with the "management and operation of the road after it was con- "structed and put in use as a public highway."

Smith vs. McCullough, 104 U. S., 25.

(d) "Depots."

The testimony showed that a grain elevator used solely by a railway company for the storage and handling of grain

shipped over its road was in all respects a freight depot adapted for the receipt of a special class of freight; or, in other words, that such an elevator is a grain freight depot (Rec., pp. 74, 76, 81).

(e) "Other appurtenances."

In presenting this case to the court below, the appellants' counsel laid much stress upon the technical rule that in the construction of deeds, land cannot be regarded as appurtenant to land. Even in its strict signification, this rule is subject to the qualification that land or other property essential to the beneficial use and enjoyment of the property granted, will pass as an appurtenance.

Whitney vs Olney, 3 Mason, 280.
Sparks vs. Hess, 15 Cal., 186.

What is appurtenant to a railway, however, with its manifold purposes and complicated needs is, of course, a question having a far wider range and demanding a much more liberal treatment. The general principle applicable has thus been stated:

"Under a mortgage of a railroad 'with its corporate "'privileges and appurtenances,' only such property passes "as is directly appurtenant to the road, and is indispensably "necessary to the enjoyment of its franchises."

Jones on Corporate Bonds and Mortgages, Sec. 70, citing State vs. Glenn, 18 Nev., 34; Morgan vs. Donovan, 58 Ala., 241.

By way of illustration, the learned author continues:

"It does not cover a hotel not used in connection with the "road and for its convenience, but as an ordinary hotel. But "it covers a hotel used for the accommodation of the patrons "and employees of the road."

Ib,. citing United States Trust Company vs. Wabash, St. Louis and Pacific Railway Company, 32 Fed. Rep., 480, U. S. Circuit Court, Southern District of Iowa.

This last case involved the construction of the granting clause of the mortgage now under consideration. The question there arose on an intervening petition filed by receiver McKissock to recover from the Wabash receivers the proceeds of a policy of insurance on a hotel adjacent to the mortgaged railway. In the course of the opinion, SHIRAS, J., said :

" The point to be determined is whether, between the " mortgagor and the mortgagees, this property is covered by " the terms of the mortgage. The evidence shows that the lot " was purchased, and the building was erected, for the benefit " of the railway company, in furtherance of its " business, and for the accommodation of its em- " ployees and passengers. If, in erecting a depot at Stanberry, " the company had included in the same building an eating " house and sleeping rooms for the accommodation of its em- " ployees and patrons, I do not think it could be questioned " but what the eating house and lodging rooms would be " deemed to be appurtenant to the railway. If the company, " instead of including the hotel as part of the depot, erect " a separate building therefor, this does not in my judg- " ment change the rule, even if the building is not immedi- " ately contiguous to the depot, but separated therefrom by " a public street. So long as the evidence shows that the " object and purpose of the company, in the erection of the " building, was to use the same for the convenience and com- " fort of its employees and passengers, and thereby directly " contribute to the proper carrying on of its business of a com- " mon carrier. I see no good reason for holding that a build- " ing so erected and used is not to be deemed appurtenant to " the railway."

Actuated, we may conclude, by similar considerations, though *a fortiori*, the learned Court entered at the same term, and without opinion, the decree from which the present appeal is taken.

Had the elevator in question been erected, owned and used by the Wabash Company alone, the conclusion seems

clear that the lien of the mortgage would, under the foregoing authorities, have attached.

We are thus brought to determine whether a different conclusion is authorized by the fact that the property as a whole was owned equally by six separate railway companies, and their title thereto evidenced by equal amounts of the capital stock of the Union Elevator Company.

THIRD POINT.

The form of the railway company's ownership does not affect the rights of the mortgagee.

A mortgage by a railway company may cover stock of another corporation subsequently acquired by it.

Williamson vs. New Jersey Southern Railway Company, 26 N. J. Eq., 398.

But the interest involved in the present suit is more than naked shares of stock.

When the six railway companies, in 1881, for the necessary purpose of storing and handling grain to be shipped over their lines, agreed, in order to avoid unnecessary expense in erecting and operating six separate grain elevators, to erect and operate one large elevator in common, there were several methods by which the ownership of their respective interests could have been evidenced. The title to the whole property might have been held in common by the six companies. It could not be contended, we submit, that had that method been adopted, the one-sixth interest of the Wabash company would not have become subject to the lien of the Omaha Division mortgage. By the formation of the elevator company, the title to the one-

sixth belonging to each railway company, passed to the elevator company, in trust, however, for the railway company. The proof is unquestioned that the elevator company was formed merely as a matter of convenience in defining the interests of the respective railway companies and operating the elevator. It is not and never has been a public elevator. No grain has ever been stored there except that shipped over some one of the six lines. No dividends upon the stock of the elevator company have ever been declared. No assessments could be made upon the stock except for actual cost of erection and expenses in operating (Rec., pp. 78, 80).

This view of the ownership of the Wabash company in the elevator is strengthened by the agreement between the six railway companies and the elevator company, entered into at the time of the latter's formation. That agreement was executed before any payments were made upon the stock of the elevator company; and after reciting the agreement of the six railway companies to contribute equally to the capital stock, provides:

"Now, as part of the consideration and inducement to such "subscriptions, it is agreed between the elevator company, "severally, to, and with each of the railway companies, that "the said elevator company will not in the conduct of its busi- "ness at any time discriminate in favor of or against either "of the six railway companies in any respect whatsoever; "and the elevator company further agrees, severally with each "of the railway companies that it will at all times do elevator "service for each of said companies on equal terms and con- "ditions, affording, *to the full extent of its capacity*, to each and "all, equal advantages and facilities."

It is obvious that the only inducement to the six railway companies in joining in the erection of the elevator was the perpetual right to use it, secured under the foregoing agreement. The agreement was the gist of the whole transaction, and the creation of the elevator company to hold the title to and manage the elevator was but a means to this common end of the real owners of the property. This agreement, the cash contributions to the cost of building and the certificates of stock

representing such contributions, constitute in each railway company as practical an ownership in the elevator, as though the land and the elevator had vested in the railway companies as tenants in common. It was this ownership or interest of the Wabash company which became subject to the mortgage of the Omaha Division. For, in the language of Mr. Justice BREWER, in a recent case, "The mortgage being one with words "of general description, conveyed land held by a full equita- "ble, as well as that held by a legal, title."

Toledo, Delphos & Burlington Railroad Company vs. Hamilton, 134 U. S., 305.

Still more pronounced sanction for our contention is found in another decision of this Court construing the mortgage of the Toledo, Delphos and Burlington Railroad Company, referred to in the last cited case. In delivering the opinion the same learned Justice said:

"Where a company is incorporated to construct a railroad "between two cities named as its termini, a mortgage given "by it which, as expressed, is upon its line of railroad con- "structed or to be constructed between the named termini, "together with all the stations, depot grounds, engine-houses, "machine shops, buildings, erections in any way now or here- "after appertaining unto said described line of railroad, "creates a lien upon its terminal facilities in those cities, and "is not limited to so much of the road as is found between "the city limits of those places. The stations, depot grounds, "etc., in the terminal cities appertain to the railroad as fully "as similar structures in places intermediate those termini. "In the absence of restrictive words such is the natural "import, and therefore must be adjudged the intent and scope "of a mortgage containing that description."

Central Trust Company vs. Kneeland, *supra* (138 U. S., 414, 419).

FOURTH POINT.

The question involved in the present appeal is res adjudicata as to the appellants.

After the execution of the Omaha Division mortgage, and the consolidation of the mortgagor company, the Wabash company, on June 1, 1880, and prior to the erection of the Union Elevator, executed to the Central Trust Company of New York and James Cheney, a second, commonly called the general mortgage, over its lines of railway, including the Omaha Division. In proceedings to foreclose the "general mortgage," had for that purpose in the United States Circuit Court for the Eastern District of Missouri, and to which proceedings all the parties to this cause were parties either complainant or defendant, it was, by a final decree of sale, entered January 6, 1886, adjudged, *inter alia*, that the lien of the "general mortgage" attached to all the right and title of the Wabash company in and to the following property:

"An interest in the elevator company at Council Bluffs, "Iowa, upon which a payment to the amount of $41,666.66 "has been made by the Wabash Company, for which no "certificate has been issued" (Rec., p. 98).

It was thereby further adjudged that neither said decree, nor any sale made thereunder, should in any way prejudice or affect the rights of parties to or persons interested in certain mortgages, deeds of trust, leases and contracts thereinafter set forth, among which was included "a deed of trust, "dated February 15, A. D. 1879, executed by the St. Louis, "Kansas City and Northern Railway Company to the United "States Trust Company of New York, as trustee, to secure "the payment of bonds amounting to $2,350,000, with interest "thereon at the rate of seven per cent. per annum" (Rec., p. 104).

The identity of the interest of the Wabash company in the elevator, with the interest claimed by petitioner, and of the deed of trust described in said decree with the mortgage to complainant herein, is established by stipulation herein (Rec., p. 84).